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Supreme Court of the United States

OCTOBER TERM, 1956

No. 260

JOSEPH CURCIO, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 12, 1956
CERTIORARI GRANTED OCTOBER 8, 1956

SUPREME COURT OF THE UNITED STATES

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Docket Entries

(A)

CRIMINAL DOCKET — CRIM. NO. C 150–62

THE UNITED STATES

vs.

JOSEPH CURCIO

Violation—Contempt of Court.

Refusal to answer questions before March 29, 1956 Grand Jury.

DATE	PROCEEDINGS
4–19–56	Hearing begun 4-17-56 and concluded 4-19-56. The Court adjudges the witness Curcio in contempt.—Noonan, J.
4–19–56	Filed Judgment—Six Months at a place of confinement to be designated by the Atty general, unless he purges himself of contempt sooner. —Noonan, J.
	Defendant to surrender 4-20-56. Released on own recognizance.—Noonan, J.
4–19–56	Issued commitment and copies.
4–20–56	Filed notice of appeal.
4–23–56	Filed notice of appearance by Arnold Cohen, Atty. 2 Lafayette St. NYC.

Docket Entries

DATE	PROCEEDINGS
(B)	
5- 8-56	Filed certified copy of Order of United States Circuit Court of Appeals releasing defendant on bail in the sum of $5000. pending appeal. A. Daniel Fusaro, Clerk
5 -9-56	Filed Transcript of Record of Proceedings dated April 17, April 19, 1956.
5-10-56	Filed order to release and file a copy of the minutes of the testimony of Joseph Curcio before the Grand Jury on April 10, 12 and 17, 1956. —Noonan, J.
5-10-56	Filed Grand Jury Minutes (copy) dated 4-10-56, 4-12-56 and 4-17-56.

Transcript of Proceedings

(1) UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Before:

HON. GREGORY F. NOONAN,

District Judge.

New York, April 17, 1956.

Appearances:

PAUL W. WILLIAMS, ESQ.,
United States Attorney, for the Government;

By ARTHUR H. CHRISTY, ESQ.,
HERBERT M. WACHTELL, ESQ., and
FIORAVANTE G. PERROTTA,
Assistant United States Attorneys.

ARNOLD COHEN, ESQ.,
Attorney for Witness.

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(2) Mr. Christy: The Grand Jury is down here, your Honor; with a request to the Court to direct a witness before the Grand Jury to answer certain questions. The witness's name is Joseph Curcio.

The Government will call the Grand Jury stenographer who took the testimony, Mr. Herman Rosenfield.

HERMAN ROSENFIELD, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Rosenfield, are you a Grand Jury stenographer? A. Yes, sir.

Q. Have you this afternoon taken the testimony of a witness named Joseph Curcio before the Grand Jury? A. Yes, sir.

Q. Mr. Rosenfield, do you have with you the stenotype tape that you took on the machine of that testimony? A. I do.

Mr. Christy: May I have it?

The Witness: Yes, sir (handing).

Mr. Christy: May we mark this as Government's Exhibit 1 for identification.

(3) (Marked Government's Exhibit 1 for identification.)

Q. I show you Government's Exhibit 1 for identification and ask you if that is the stenotype tape of a proceeding that you took before the Grand Jury. A. It is.

Q. Mr. Rosenfield, will you read to the Court the testimony that you have taken in the Grand Jury room.

Mr. Cohen: May it please the Court, I have no objection to this line of questioning, but will the witness be furnished with a copy once the minutes are transcribed of the questions which are the subject in issue at the present time?

Mr. Christy: At this point I do not think the Government is required to turn over to the witness a transcript of his testimony. This is merely a

request by the Grand Jury for a direction to the witness to answer certain questions.

Mr. Cohen: My request holds.

The Court: I beg your pardon?

Mr. Cohen: I still urge my request when these minutes are—

The Court: I do not think he is entitled (4) to any copy of the minutes at this point.

Mr. Christy: At this point. Should this go into a contempt proceeding, at that time of course the witness would be entitled to a transcript.

The Court: You are Mr. Curcio's attorney, I take it.

Mr. Cohen: Yes, sir, Arnold Cohen.

The Court: Have you noted your name on the record, Mr. Cohen?

Mr. Cohen: Yes. I repeat the appearance.

By Mr. Christy:

Q. Mr. Rosenfield, would you read the questions and answers, please. A. The witness was first duly sworn by the Foreman. (Reading)

By Mr. Wachtell:

Q. Mr. Curcio, you appeared before this Grand Jury on Thursday, is that correct, April 10th? A. Yes, sir.

Q. Is your lawyer with you today? A. Yes, sir.

Q. What is his name? A. Mr. Arnold Cohen.

Q. I am going to ask you some questions, including (5) some that were put to you on Thursday which you declined to answer. Referring to the books and records of Local 269 of the International Brotherhood of Teamsters, have you at any time been in custody of those books and records?

The Witness: I would like to make a statement if I may at this time.

Mr. Wachtell: Mr. Curcio, will you please answer the question that was put to you.

The Witness: May I make this statement?

Mr. Christy: No, you cannot make any statement here in the Grand Jury.

The Witness: No statement?

Mr. Christy: No statement. You will be required to answer the question. Do you wish the question repeated?

The Witness: May I, please?

Mr. Wachtell: Would the reporter read back the question which is open.

(Whereupon the reporter read the question.)

The Witness: May I be refreshed as to what my answer was on Thursday?

Mr. Wachtell: Yes. On Thursday you first refused to answer that question on the grounds that (6), you felt it might tend to incriminate you. Subsequently, you said that you had not been in custody of those books and records on Monday, a week ago yesterday.

The Witness: I had refused to answer the question on Thursday and I refuse to answer it now.

The Foreman: You are directed to answer the question.

The Witness: I maintain my privilege.

By Mr. Wachtell:

Q. Mr. Curcio, have you ever had possession of the books and records of this local?

The Witness: I refuse to answer that question.

The Foreman: You are directed to answer it, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Did you have custody and control of these records last Thursday?

The Witness: I refuse to answer that question.

The Foreman: You are directed to answer, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Do you have possession of those records (7) or any of them today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Do you have custody and control of any of those records today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where are any of those records today, if you know?

The Witness: I refuse to answer.

The Foreman: You are directed to answer, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who has any of those records today, if you know?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any of these records or all of (8) these records a week ago Thursday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any or all of these records a week ago Saturday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any or all of these records a week ago yesterday, Monday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any or all of these records this past Thursday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where are any or all of these records, today?

(9) The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who, if you know, had any or all of these records a week ago Saturday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who had any or all of these records a week ago yesterday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who has any or all of these records today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer that question, Mr. Curcio.

The Witness: I maintain my privilege.

Mr. Wachtell: Mr. Foreman, would you excuse the witness and direct him to remain in the waiting room.

(The Foreman so directed the witness and the witness left the room.)

(10) Mr. Christy: No further questions, Mr. Rosenfield.

Mr. Cohen: No questions.

Mr. Christy: Thank you, Mr. Rosenfield.

(Witness excused.)

Mr. Christy: May I give you just a bit of the background, your Honor?

Mr. Curcio was subpoenaed for April 10th, served with a duces tecum subpoena for that day. He did appear on that day, at which time he requested the Grand Jury to give him an opportunity to consult with counsel before he answered any questions.

At that time the Grand Jury directed him to return on Thursday, April 12th, at which time he would testify.

He appeared on that day and he answered certain questions, but he claimed his privilege on the bulk of the questions.

He was directed by the Grand Jury on April 12th to return today. He has appeared and has refused to answer certain questions.

I might say to your Honor that on Thursday, April 12th, when he appeared, he admitted that he was secretary-treasurer of Local 269, and he admitted (11) that he had been served with a subpoena duces tecum. He at that time denied possession of the books on certain days, and Mr. Wachtell will be able to give your Honor the rundown on that, if your Honor wishes it.

The Court: How do you say, Mr. Cohen, that his answering of these questions might incriminate him?

Mr. Cohen: The witness, I have been informed, did at one time answer questions that he did not have possession of the books and records. That

certainly takes care of the subpoena duces tecum which was served upon him. Any other question relating to "Did you ever have possession" or "Do you know who has possession" I feel that his privilege goes to these questions and answers, because the nature of the investigation before the Grand Jury, if we are to try to get our information from the press, is to investigate racketeering in trucking and food local unions.

In addition to that, we have here a civil action which is now being litigated, I think, on the 15th floor of this court.

Insofar as the nature or purpose of any (12) investigation by the Grand Jury relating to those questions, the defendant in many ways could be tied in, not being able to find out or determine or not being permitted to find out or determine the nature of the investigation in question, and he has the right, if in his mind he believes that the answer might incriminate him, to assert the Fifth Amendment to protect himself. I am telling the Court in good conscience that he is asserting the Fifth Amendment because in his mind there is some doubt as to whether or not any of these answers might incriminate him by conspiracy, by association, or by any other subsequent action that the United States Attorney's office might start.

The Court: I do not think it is possible, of course, under the circumstances, for anybody to become a metaphysician and determine what is in somebody's mind. I do not think we have gone so far in modifying the ancient rules of Anglo-Saxon jurisprudence to permit a reluctant witness, like the reluctant dragon, to hamstring a grand jury investigation by a mere claim that he has in his own mind that he

thinks to answer the question will tend to degrade or incriminate upon.

It would seem to me to be incumbent upon (13) the person who asserts the claim of privilege to justify that claim at the bar of reason.

Assuming, arguendo, that it is asserted in good faith, I do not think that is sufficient to justify the rule, or to satisfy, rather, the rule that now exists in this circuit.

Mr. Cohen: Judge, we are not clear as to whether or not admission of possession of any of these records might not involve him in a criminal prosecution.

The Court: He is admittedly, is he not, the former secretary or former secretary and treasurer?

Mr. Cohen: He admitted to that. He stated that.

The Court: Then, in the normal course, and presuming regularity and not irregularity, the secretary-treasurer of any organization, incorporated or unincorporated, would either have possession of or at least access to the possession—

Mr. Cohen: He stated—

The Court: —of the books and records of the outfit which he represents.

Mr. Cohen: He stated that he did not now have possession of those records. I understand that question and answer was made.

(14) The Court: That is a satisfactory answer as far as it goes.

Mr. Cohen: Concerning when and where the records were last seen or whether there are any other records in existence, I think that his privilege is properly asserted.

The Court: Is that all you have to say?

Mr. Cohen: At this time those are the questions,

and I think he has properly asserted his privilege.

The Court: I do not think you have made a showing sufficient to justify my holding that the claim of privilege has been asserted in good faith.

Mr. Cohen: May I be heard for just one moment, sir?

The Court: Surely.

Mr. Cohen: I believe that the burden is upon the United States Attorney to prove that there is a wilful and criminal contempt in refusing to answer.

The Court: In the Trock case decided this month in this circuit, you will see that the rules are set down. United States v. Trock.

Mr. Christy: I might point out to your Honor that this is not a contempt proceeding at this point but is merely a request for direction.

(15) The Court: This is a request for instructions, but—

Mr. Cohen: May I make this one further statement, Judge?

The Court: I do not think, frankly, and it is not just because, Mr. Cohen, that I used to be in the U. S. Attorney's office, but I do not think anybody should be permitted to make a mockery of a grand jury investigation by glibly asserting his privilege of the Fifth Amendment. Unfortunately in the past few years the Fifth Amendment has become something which most Americans look askance at, instead of feeling that it is one of the greatest safeguards that we have in the Bill of Rights.

Mr. Cohen: The Supreme Court has recently stated that.

May I, as an officer of this court, make a further statement?

The Court: Surely.

Mr. Cohen: I believe that to some extent the investigation, as far as I have been informed by my client, by the jury, is going into the internal affairs of a labor organization. I believe if there is any suspicion, proof or reason to believe that any (16) labor organization or any official of any labor organization has committed any crime, they should be vigorously prosecuted. But I also feel that the United States Attorney's office should not be used to go into the internal affairs of a labor organization and to ask questions that are not material or relevant to the purposes of convenience of this noble and honorable Grand Jury for the purpose of possibly establishing something which is the subject of litigation in another part of this building.

The Court: I am certain that, first of all, the United States Attorney, Mr. Williams, who is in the courtroom, he does not need any defense from me for his actions. That goes without saying. But I am certain that just as the proceedings before this Grand Jury links up with what we have heard in court, are secret, as far as you are concerned, and as far even as the Court is concerned, and that secrecy prevails with even greater force as far as the parties to the civil litigation are concerned, which you say is going on on the 15th floor. I am certain that this Grand Jury investigation is not being conducted in aid of any party to that particular civil litigation upstairs.

(17) Mr. Cohen: Another line of questioning, independent of the production of the books and records, seems to indicate support to my position.

The Court: I am going to tell the witness—is this the witness, Mr. Curcio?

Colloquy

Mr. Curcio: Yes.

The Court: I am going to tell you, Mr. Curcio, that I do not believe that with respect to the questions asked, as read by the stenographer here this afternoon before me, that the claim of privilege is properly exercised by you. I direct you to return to the Grand Jury room and answer the questions asked. If you don't, then it will be up to the Foreman and the members of the Grand Jury to decide whether you will be brought down before the Court and the Court asked for a contempt citation.

Mr. Cohen: May I ask the Court whether the direction is as to all of the questions? Certainly there were some of the questions there, and I contend all of them, where the privilege was properly asserted: Would you give some specific direction?

The Court: All of the ones that I heard the stenographer read seem to me to be repetitious in many respects, but certainly the ones that I heard have (18) been properly asked and should be answered.

Mr. Cohen: Could the direction be limited to a certain few questions that Mr. Christy might advise the Court of that he wants answers to?

As it is, I think it is—

The Court: Certainly they are all the same, relatively speaking.

Mr. Christy: That is right.

The Court: Except as to different dates, whether it was last Thursday, today, or last Tuesday or today, last week or today.

Mr. Cohen: Can we have the witness directed as to three or four questions that you might want a direction on, Mr. Christy?

Mr. Christy: I would like to have the witness directed to answer all questions.

Colloquy

The Court: I will direct the witness to answer as many of those questions that were asked today as the United States attorney sees fit to re-ask. He may decide not to ask all of them again.

Do you understand that, Mr. Curcio?

Mr. Curcio: Yes, sir.

Mr. Wachtell: I would like to state for the record that there are other questions not pertaining (19) to the books or records which it has been indicated to the Court that the witness did not answer on a prior appearance. The Government might feel at some future date that those questions are proper.

The Court: You, of course, have the right to reserve any rights which you have.

Mr. Wachtell: And in view of your Honor's ruling we believe that it is not necessary to raise this issue. I would just like to state for the record that there are substantial grounds here, in view of some of the answers that have not been given by the witness on his last appearance before the Grand Jury, on which the asserted claim of privilege urged by Mr. Cohen would have been waived. I state that for the record.

Mr. Cohen: May I have time to consult with my client before he returns to the Grand Jury room?

The Court: Certainly.

Mr. Christy: You may consult with him.

The Clerk: Retire to Room 514.

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(20) New York, April 19, 1956

Present:

Mr. Christy,
Mr. Wachtell,
Mr. Perrotta,
Mr. Cohen.

The Court: Yes, Mr. Christy?

Mr. Christy: Your Honor will recall that this matter was brought to your attention last Tuesday. At this point the Grand Jury again requests the aid of the Court in compelling a witness, Joseph Curcio, to answer certain questions.

Before I call the Grand Jury stenographer, I would like to make a statement with regard to certain things that have happened.

As I advised your Honor Tuesday, the witness first appeared before the Grand Jury on Tuesday, April 10, 1956. He had been served with both a personal subpoena and a subpoena duces tecum for the production of books and records of Local 269.

At his appearance on April 10th he refused to answer any questions without having an opportunity (21) to consult with his attorney. At that time the Grand Jury gave him an opportunity to talk with his attorney and requested him to return to the Grand Jury on Thursday, April 12th.

At his appearance on April 10, 1956, he did not bring with him any books or records as called for in the subpoena duces tecum.

In accordance with the direction of the Grand Jury given on April 10, 1956, Curcio reappeared

before the Grand Jury on Thursday, April 12th. On Thursday, April 12th, he again appeared without any records, and at this session a number of questions were put to the witness. He refused to answer a great many of the questions, particularly the questions relating to the existence or the whereabouts of the books and records.

During that session the defendant Curcio admitted that he was the secretary-treasurer of Local 269 of the International Brotherhood of Teamsters. He admitted that on Monday, April 9th, he had been served with a subpoena duces tecum calling for the records of that local, and at that session of the Grand Jury he admitted that such records did exist.

He also said that the records were not in (22) his possession on Thursday; that they had not been on the previous Monday. He said that he did not have custody or control on Monday, custody and control of the books, and he refused to answer any questions as to whether he had had custody or control at any other time. He refused to say where the records were or who had them. At that time the Grand Jury directed him to return again on Tuesday, April 17th.

He returned to the Grand Jury on April 17th, and a series of questions were put concerning the location of the books and records of Local 269. He refused to answer these questions and was directed by the Foreman of the Grand Jury to answer these questions. At that time he was brought down before your Honor, the questions were read off, and your Honor directed the witness to return to the Grand Jury and answer the questions which he had theretofore refused to answer.

In accordance with your Honor's direction the wit-

ness returned to the Grand Jury and the questions which had been put to him previously, and which were read to your Honor in court, were again put to the witness, and again Curcio claimed his privilege as to each and every question which had been put to him (23) previously. At this time I would call Herman Rosenfield, the Grand Jury stenographer.

Mr. Cohen: May I be advised of the purpose of this hearing or this proceeding?

Mr. Christy: This is a contempt proceeding, your Honor.

The Court: In other words, Curcio is being cited by the Grand Jury foreman to the Court for contempt for refusing to follow the direction of the Court issued to the witness Curcio on Tuesday, April 17th?

Mr. Christy: Did you ask if he has been voted in contempt?

The Court: I say he has been cited by the foreman and the Grand Jury to the Court now?

Mr. Christy: Yes.

The Court: For contempt.

Mr. Christy: In reply, the Grand Jury has not voted a contempt citation at this time, nor is it a contempt proceeding for what has actually occurred up to date.

I request at this time that the questions the witness has refused to answer be put to him again by the Court with a request to the witness asking if he intends to answer the questions, at which time a (24) contempt will be committed in the presence of the Court.

The Court: Well, if it is committed in the Grand Jury room it is still in the presence of the Court, as far as that goes. But I think that under the new

rules you have to file a written specification, don't you, Mr. Wachtell?

Mr. Christy: I do not believe that is so, your Honor.

(Discussion between Mr. Christy, Mr. Wachtell and Mr. Perrotta off the record.)

Mr. Wachtell: I believe that under Rule 42, that while a grand jury in the presence of the court, under the statute, the witness is guilty of contempt, if repeated in the presence of the court, under subsection (a), Rule 42, dealing with the summary disposition of procedure for contempt.

Therefore, the Government is now asking that in accordance with the procedure followed in the recent Trock case, with which I believe your Honor is familiar—

The Court: Yes.

Mr. Wachtell: —that the questions be put to the witness now in the physical presence of the Court, and if he continues to refuse he may be (25) punished summarily under Rule 42(a) of the Federal Rules of Criminal Procedure.

Mr. Cohen: May I be heard?

The Court: Yes.

Mr. Cohen: If this is a contempt proceeding, I ask for a reasonable time to prepare a defense and ask that the defendant be served with a list of specifications as to the essential facts which the Government alleges is relevant to a contempt proceeding or which constitutes contempt.

I also asked to be served with a copy of any testimony before the Grand Jury as to the questions which he has been directed to answer, the questions which the Government claims constitute the con-

tempt, before undertaking any hearing, and in the interest of justice that the witness should be given a reasonable opportunity to prepare a defense.

The Court: As I gather it, this proceeding now before me is not a contempt proceeding. When I said it was before, I was apparently in error. It is not a contempt proceeding.

Mr. Cohen: I did not understand Mr. Christy, then.

The Court: The witness is being brought (26) before the Court for the purpose of having him answer certain questions by the Court in the presence of the Grand Jury, and if he refuses to answer those questions, then I would assume that it would be up to the Court to determine whether he was guilty of contempt of court.

Mr. Cohen: I ask the Court to follow the ruling in the Carlson case, 209 Fed. 2d 209, where the Circuit Court there held that contempt proceedings should be instituted under Rule 42(b).

The Court: In the Trock case it was done just the way Mr. Wachtell suggests.

Mr. Cohen: I am relying upon the appellate court of that jurisdiction where—

The Court: That was affirmed by the Circuit Court in this circuit.

Mr. Cohen: I do not agree with that.

The Court: That is the court that binds me. That is the one which tells me what to do.

Mr. Christy: That was a decision decided on April 9, 1956.

Mr. Cohen: Will your Honor pass upon my request?

The Court: No. I will let the Government proceed at this time and see what develops.

(27) HERMAN ROSENFIELD, called as a witness by the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Rosenfield, are you a Grand Jury stenographer employed in the Southern District of New York at the United States Courthouse? A. Yes, sir.

Q. Did you on April 17th take the testimony on two occasions of the witness Joseph Curcio? A. I did.

Q. How do you take your notes, sir? A. Stenograph.

Q. Do you have the stenograph tape on the second occasion on which Mr. Curcio appeared? A. I do.

Q. May I have it? A. Yes, sir (handing).

Mr. Christy: Mark this Government's Exhibit 2.

(Marked Government's Exhibit 2 for identification.)

Q. I show you Government's Exhibit 2 for identification and ask you if that is the stenographic tape that you took the testimony of Joseph Curcio on (28) his second appearance on April 17th. A. It is.

Q. And from that stenographic tape did you prepare a transcript of the testimony on the second occasion? A. I did, and from the previous notes which were taken.

Q. Do you have a transcript of the testimony on the second occasion? A. Yes, sir (handing).

Mr. Christy: Will you mark this for identification.

(Marked Government's Exhibit 3 for identification.)

Q. Mr. Rosenfield, I show you Government's Exhibit 3 for identification and ask you if that is a transcript of the testimony of Joseph Curcio on the second appearance on April 17, 1956. A. It is.

Q. Is it a true and accurate transcript? A. Yes.

The Court: The second appearance on that day?

Q. The second appearance on April 17, 1956? A. That's correct.

(29) Mr. Christy: I will offer Government's Exhibit 3 for identification in evidence, your Honor.

The Court: Have you a copy for Mr. Cohen?

Mr. Christy: Yes. We have a copy that we will provide Mr. Cohen with (handing to Mr. Cohen).

May the record show that a copy of Government's Exhibit 3 was handed to the defense attorney.

Mr. Cohen: May I examine him on the voir dire?

Cross Examination by Mr. Cohen:

Q. Have you examined Government's Exhibit 2 for identification? A. May I see it?

Mr. Christy: You have it up there, Mr. Rosenfield.

The Witness: Yes, I have.

Q. When was the last time you examined it? A. Yesterday evening before this appearance in court.

Q. When did you prepare Government's Exhibit 3? A. That is the transcript?

Q. The transcript. A. Yesterday evening.

(30) Q. Did you read the transcript after it was pre-

Q. When did you do that? A. I read that this morning.

Q. Did you read it alone? A. Alone.

Q. So that two steps were taken: You say that you examined the original notes when you took them, is that right? A. That's correct.

Q. And thereafter you examined the transcript, you prepared a transcript; is that right, on those notes? A. That's right.

Q. You then said that you read the transcript? A. That's correct.

Q. Is that all that you did in connection with Government's Exhibit 2 and Government's Exhibit 3 for identification? A. That's correct.

Mr. Cohen: I respectfully submit that there is no proof before the Court that this is an exact or proper transcription, since it was never compared (31) with the original notes, from the testimony of the witness.

The Court: When you said you looked at it, did you check it against the stenographic notes, the stenotype notes?

The Witness: I did not check it word for word against it after it was transcribed, but I read through it to take care of any typographical errors that may have occurred.

Mr. Cohen: I press my objection.

The Court: He is technically right, I suppose.

Mr. Christy: If there is any question, I can have Mr. Rosenfield read from his notes right now.

The Court: All right, Mr. Cohen, if you want to waste time.

Mr. Cohen: I just want the record to be completely clear that he says this is correct. If he reads through it and there is any doubt, I am not here

to waste the time of the Court, but I have to protect the legal privileges of my client. That is all I am doing.

The Court: Do you waive objection to that exhibit, or withdraw it, rather?

(32) Mr. Cohen: I will withdraw it if Mr. Rosenfield in any way can say that some check was made as against the notes. If he does it now for a few minutes. I will take a spot check.

The Court: Spot check it against your notes.

Mr. Cohen: I do not know whether they are both the same thing at this moment. The Grand Jury does not know it either.

The Court: We will take five minutes and let him do that.

(A short recess.)

By Mr. Cohen:

Q. Did you spot check Exhibit 3? A. Yes, sir.

Q. What is your finding? A. My finding is that it is accurate.

Mr. Cohen: I withdraw my objection.

(Government's Exhibit 3 for identification received in evidence.)

Mr. Christy: Mark this for identification.

(Marked Government's Exhibit 4 for identification.)

Mr. Christy: At this time the Government (33) will offer Government's Exhibit 4 for identification.

which is the subpoena duces tecum which was served upon Mr. Curcio for the production of the books and records which he has so far refused to produce.

Mr. Cohen: No objection.

(Government's Exhibit 4 for identification received in evidence.)

Mr. Cohen: I call the Court's attention to this point. With reference to Exhibit 4, there was testimony recited by Mr. Christy, given by the witness during a session before the Grand Jury on April 12th. We have no transcript of that. I just want to direct the Court's attention to that. He did answer cerain questions relating to the subpoena duces tecum.

Mr. Christy: At this point, your Honor, the Government would request that the Court put to the witness Curcio those questions contained in Government's Exhibit 3 and ask him if he intends to answer those questions.

The Court: Will you take the stand, Mr. Curcio. I expect he had better be resworn because it is before me.

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(34) JOSEPH CURCIO, being first duly sworn, testified as follows:

The Court: Mr. Curcio, I expect to proceed to ask you certain questions, but before I do I want to ask your counsel, Mr. Cohen, if he has any instructions he wishes to give you.

Mr. Cohen: I was anticipating that. I would like to advise my client that if he in good faith reasserts

his privilege as to any question that he feels might incriminate him, even though the Court does ask the questions, he may do so.

The Court: All right. I will read the questions which appear on Exhibit 3, and I am just reading the questions, Mr. Cohen, so you can follow me.

Mr. Cohen: Yes, sir.

Examination by the Court (Reading):

"Q. I am going to ask you certain questions, including some that were put to you on Thursday, which you declined to answer. Referring to the books and records of Local 269 of the International Brotherhood of Teamsters, have you at any time been in custody of those books and records?" A. I most respectfully, your Honor, refuse to (35) answer on the ground that it may tend to incriminate me.

Q. "Q. Mr. Curcio, have you ever had possession of the books and records of this local?" A. I most respectfully, your Honor, refuse to answer on the grounds that it may tend to incriminate me.

Q. "Q. Did you have custody and control of these records last Thursday?" That is a week ago today. A. I most respectfully, your Honor, refuse to answer on the grounds that it may tend to incriminate me.

Q. "Q. Do you have possession of those records or any of them today?" A. I most respectfully, your Honor, refuse to answer on the grounds it may tend to incriminate me.

Q. "Q. Do you have custody and control of any of those records today?" A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. "Q. Where are any of those records today, if you

know?'' A. I most respectfully, your Honor, refuse to (36) answer on the grounds it may tend to incriminate me.

Q. ''Q. Who has any of those records today, if you know?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Where were any of these records or all of these records a week ago Thursday?'' That would be two weeks ago today. A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Where were any or all of these records a week ago Saturday?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Where were any or all of these records a week ago last Monday?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Where were any or all of these records yesterday?'' That question reads ''Thursday.'' I am changing it to ''yesterday.'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

(37) Q. ''Q. Where are any or all of these records today?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Who, if you know, had any or all of these records a week ago last Saturday?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Who had any or all of these records a week ago yesterday?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

Q. ''Q. Who has any or all of these records today?'' A. Most respectfully, your Honor, I refuse to answer on the grounds it may tend to incriminate me.

The Court: Those are all of the questions that were asked.

Mr. Christy: Your Honor, may I make a statement for the record: That the questions which your Honor has read to the witness were those put to the witness on April 17th, 1956. So when your Honor used the word "today," you refer to that day.

The Court: That is correct. When I (38) referred to a week ago last Saturday I referred to—

Mr. Christy: Saturday preceding April 17th.

The Court: —the Saturday preceding April 14th.

Mr. Christy: April 17th, I believe.

The Court: April 14th.

Mr. Christy: I beg your pardon.

The Court: I refer to a week ago last Saturday.

Mr. Curcio, in the absence of some explanation or justification for your refusal to answer these questions—and I do not think there is any apparent reason that would justify the exercise by you of the claim of privilege under the Fifth Amendment—however, before I make any formal finding or impose any punishment, I want to give your attorney an opportunity.

I think under the rule of law laid down in the Trock case, Mr. Cohen, you have the burden of proving, to a point at least, that there is some justification for the claim of privilege, not that you have to explain in such detail so that the very effect of the privilege itself would be destroyed by virtue of the explanation, but I think the case is pretty clear and stands clearly for the proposition, that you (39) have to take some step forward beyond the mere refusal where, in the opinion of the Court, there is no proper basis for the exercise of the

privilege, where the questions do not show themselves, or show from the face of the context of the questions, that there is a possibility of self-incrimination of the witness.

Where were these books last week or two weeks ago; where were they last Saturday or a week ago last Saturday; where are they today; who has them today; did he ever have them; does he have them now? Those would certainly not appear on their face to be questions that would tend to incriminate him.

I have in mind if the question he was asked, Did he consult the other night or did he meet in the basement of some West Side tenement the other night and plan a murder, or something of that sort, where it appears on the face of the question that he has justification for exercising the Fifth Amendment.

What do you say, Mr. Cohen?

Mr. Cohen: Well, absent the making of a statement as to what I think is valid to the claimed privilege, if we are proceeding in a contempt proceeding, I would ask reasonable time to prepare a defense, and whatever my claim might be, to have it supported by (40) witnesses or any other documents that I may feel are relevant or material to the defense of contempt in a contempt proceeding. I would also want reasonable time to prepare the defense, and also the specification might relate to the subpoena duces tecum. I have not been served with a transcript of the April 12th testimony before the Grand Jury.

I further feel that the United States Attorney's office should advise the witness and counsel as to what are the essential facts constituting any contempt of court.

Joseph Curcio—Defendant—By the Court

The Court: I think in a summary proceeding where the facts are of this fashion; the essential facts are rather self-evident that the witness was asked a question and he has refused to answer the question, I said that absent some explanation by you, showing a justification for the exercise of that Fifth Amendment, I am prepared on the face of the record, without any explanation, if you do not make any, to hold that the conduct of the defendant is such as to constitute a contempt of this court.

Mr. Cohen: Will your Honor set it down for a hearing and give me a chance to call some witnesses?

The Court: In a summary proceeding of this (41) fashion, I do not think it is necessary. This contempt has now been committed, not against the Grand Jury, but against the Court. He has just refused to answer these questions that I have told him to answer.

I will give you another chance, Mr. Curcio. I am going to tell you now that I am directing you now to answer these questions. If I were to put these questions to you again, would you still claim the privilege of the Fifth Amendment?

Mr. Cohen: May I be heard at this time?

The Court: I want him to answer that question first, Mr. Cohen, if I may.

The Witness: Yes, your Honor.

The Court: You would not answer them if I asked them again?

The Witness: Yes, your Honor.

Mr. Cohen: May I state to the Court that I believe this is still a proceeding before the Grand Jury. It is not a trial. It is not a hearing before the Court.

Joseph Curcio—Defendant—By the Court

The Court: The Grand Jury is an arm of the Court.

Mr. Cohen: It is an arm of the Court, but (42) it is still a proceeding, and it might be a contempt committed before the Court during the course of trial or proceeding or hearing. It is still a proceeding before the Grand Jury. It is a secret proceeding. The witness is not advised of the extent or purpose of the investigation.

The Court: Nothing secret about this. Any spectator who has wanted to come in has been allowed in.

Mr. Cohen: I am talking about the Grand Jury.

The Court: The press is here, I see; at least I assume they are members of the press. I think I recognize one. So there is no secrecy about this proceeding.

Mr. Cohen: Not in court.

The Court: As it would be if it were up on the fifth floor before the Grand Jury.

Mr. Cohen: I still claim that this is a proceeding before the Grand Jury. Again I ask the Court to follow the Carlson case, whatever the law may be, and I think there should be a hearing. He should be given an opportunity to prepare a defense and call witnesses, if we feel that they are necessary.

(43) But I do not want to evade answering your question, since you ask me as an officer of the court, why do I believe that he is exercising properly the claim of privilege.

I say that this investigation might lead to a conspiracy indictment; that the questions that are being asked might, in some way, be connected with or be part of or used for the conspiracy indictment. Having that in mind, in good faith, even though it

might be an erroneous assumption of privilege, it is not contempt because certainly with the avenue of investigation today, we have to examine the atmosphere that we are living in; not only the jurisdiction of the federal but also the jurisdiction of the state, and there is certainly sufficient ground to believe that conspiracy might lie from the line of questions that are being asked. If that is in the witness's mind, as I know it is in the witness's mind, I say that he is properly exercising his constitutional guarantee under the Fifth Amendment not to answer these questions on the ground that the answers might incriminate him.

The Court: I cannot conceive how the answering of the questions now before the Court—and that is all I am concerned with—could possibly (44) incriminate him in any conspiracy. Maybe Mr. Christy can resolve it.

Mr. Christy: Your Honor, I want to say as to the argument as to the availability of the privilege, the time for such argument occurs at the time the Court directs the witness to answer the questions, at the time we were down here on Tuesday, April 17th.

You have given the witness a direct order of the Court to answer them. I do not think that Mr. Cohen at this time can argue the availability of the privilege.

The Court: I think he can argue it.

Mr. Cohen: May I answer Mr. Christy's statement?

The Court: Yes.

Mr. Cohen: Then I certainly would be prepared somewhere else to discuss with your Honor why I believe answering these questions might be the sub-

ject matter of a conspiracy indictment, or might lead to a conspiracy indictment. As your Honor said—

The Court: I do not think there is a member of the Grand Jury panel here who could conscientiously or honestly say that they have the remotest idea as (45) to what kind, if any, indictment will be filed.

Mr. Cohen: That is just it.

The Court: Mr. Christy probably does not even know. He might have hopes.

Mr. Cohen: That is a protection against what might transpire. That is a real danger, a conspiracy indictment.

The Court: I think there has to be a going forward by the witness in this case, the witness and his counsel, such as would satisfy me that there is a real possibility of harm—

Mr. Cohen: Judge, I can go further.

The Court: —coming to the witness. Nobody wants that to happen.

Mr. Cohen: As you said so wisely, you do not want the witness in fact to waive his privilege by advising the United States Attorney or the Grand Jury of any facts that might lead to the statements made, as to just what further is in his mind as to a conspiracy. In that way he would be called upon to testify against himself.

The Court: He is probably afraid that he will wake up some morning with his head in a cement block at the bottom of the East River if he talks too (46) much, or at least he has to make some attempt to justify it, if he should talk later and say anything. He has got to make some showing in advance thereof that what he said was minimal and then only because the Court hit him over the head.

Mr. Cohen: I have a valid answer to that, but I do not want to speculate in any way.

The Court: I was only joking.

Mr. Cohen: I know that. As an attorney, I want to answer your Honor as to what I think is the proper defense here, and I fear that in that way it might be going beyond his privilege. But if your Honor wants me to explain it to you before you rule, may I have the privilege of doing so in the absence of the Grand Jury and in the absence of the United States attorneys? I won't hesitate to do it. I will tell your Honor exactly what is in my mind, and most likely in my client's mind. I would not hesitate to do that.

The Court: Mr. Cohen, I do not think in fairness to the Government or to the Grand Jury that I should have you tell me something in secret which they cannot know.

Mr. Cohen: I would tell that. Mr. Christy (47) could be present.

The Court: I think if you could tell it to Mr. Christy and to the Court, you could tell it to the Grand Jury. As a matter of fact, they are bound by an oath and I am not bound by one.

Mr. Cohen: I am bound by an oath, too, sir.

The Court: I know that.

I am going to adjudicate the witness in contempt of court and I am going to commit him to the custody of the marshal and the United States Attorney General until such time as he has purged himself of contempt.

Mr. Cohen: Would you in way fix bail at this time? You have the right.

The Court: I will fix bail, yes. At least I assume I have that right.

Mr. Cohen: I think you do, sir. There are serious questions involved.

The Court: Does he live with his wife or his family?

Mr. Cohen: He lives with his wife.

The Witness: I live with my wife and son.

The Court: Where is that, Mr. Curcio?

(48) The Witness: Flushing.

The Court: Do you have your own house?

The Witness: No, I live in an apartment.

The Court: Do you own a car?

The Witness: Yes, sir.

The Court: How long have you lived in that house?

The Witness: The house I am in now, it is only a matter of a month, but I live in the development over three years.

The Court: How long have you been married?

The Witness: Going on sixteen years.

The Court: Never been in any trouble? Do you have a record?

The Witness: Yes, your Honor.

Mr. Christy: May I say something, your Honor? As you have already adjudicated the witness in contempt, to admit him to bail you must find that there are substantial questions of law. It seems to me that under your Honor's ruling he is not therefore entitled to bail.

Mr. Cohen: I intend to exhaust all of my rights and remedies. This is not a frivolous attempt. I want to take this up with care.

(49) The Court: Mr. Christy, what I have in mind, I am following what I conceive to be the rule of law laid down by the Court of Appeals just recently in a 2-to-1 decision, April of this year,

April 6th. Judge Medina dissented. The two judges ruled that what I am doing here is apparently the right procedure to follow.

But there is a case that Mr. Cohen called my attention to, which would be binding on me if we were holding court in Boston, because the Court of Appeals for the First Circuit has said just what Mr. Cohen urged just before we took the recess, namely, that there must be written specifications and charges and opportunity for the defendant to put in an answer and for a hearing. But there cannot be any summary disposition of a contempt, whether it is committed in the presence of the court or in the presence of the grand jury, and for that purpose, as far as that goes, the grand jury room is considered as being a part of the court, on the theory under which we have always proceeded. There is a very able dissenting opinion by Judge Medina, but I do not think the Court would reverse itself. There is a question that has been resolved as far as the United States Supreme Court (50) is concerned.

The circuit that is binding on me has said that what you should do is what the United States Attorney's office has done and in the way that I have decided it. You are dealing here with somebody's freedom. No matter who they are, what you think they are, what they have been or may be, that is something that you cannot deal lightly with. There is nothing more important than a person's individual freedom.

Mr. Christy: Your Honor, you referred to the Carlson case a minute ago. I have that case here. We respectfully disagree with something you said

about it. If I may read and quote from that case, the Carlson case, 209 Fed. 2d 209, and on page 216 the Court says:

"If the witness then and there in the face of the court declines to do so, this is disobedience to the lawful order of the court under 18 USC 401-3. And since disobedience occurs in 'the actual presence' of the judge, it may be punished summarily under Rule 42(a)."

The Court: What did I say that was different than that?

(51) Mr. Christy: Your Honor indicated that it had to be done under specifications under the Carlson case.

The Court: No, I said if we were in the First Circuit. Don't they hold—

Mr. Christy: This is the case I am reading from.

The Court: Are you reading from the majority opinion?

Mr. Christy: I think so.

The Court: I am sure that the procedure that we followed here is certainly the correct one in this circuit, in any event.

Mr. Cohen: I am going to urge Judge Medina's decision—

The Court: I tell you, I will give you until 4.30 to get bail in the Court of Appeals. I will deny bail here. But I do want in the sentence that I imposed, I want to impose sentence of six months with the right on the witness to purge himself at any time by answering the questions. I forgot to say "six months," otherwise he might be there—

Mr. Cohen: I have nothing to go before the Court of Appeals on, no order.

(52) The Court: You can go up there.

Joseph Curcio—Defendant—By the Court

Mr. Wachtell: Your Honor, there has to be a written order under the rules, and a certification by the judge, in writing. The Government is preparing the draft. It will be ready soon.

Mr. Cohen: Won't your Honor admit him to bail? He has always appeared in this jurisdiction. He is subject to any subpoena. I can make this statement to the Court. You were given certain dates. On April 9th, when he was served, I was in Albany before the State Labor Relations Board. On April 10th I was in the Supreme Court, Nassau County, on an injunction case. As soon as I was notified, I asked the United States Attorney's office to put it over so I could consult with him because I knew nothing. It was only for the first time that he was brought before the Grand Jury. Even though I was in Nassau County, and it was on that date that it was adjourned to the 12th. He did return. He has been available and present. Certainly that is the purpose of bail in this jurisdiction, not to punish.

I have the right, and I think there is a substantial question of law, certainly in the light of Judge Medina's decision, I respectfully urge that (53) this Court, in spite of my learned colleagues and all this activity on the right, that you do admit him to bail, because, as your Honor—

The Court: Was Trock admitted to bail?

Mr. Christy: I am advised by Mr. Perrotta that he was not admitted to bail in the District Court or the Circuit Court.

Mr. Perrotta: In the Court of Appeals there was a motion for bail, and the majority opinion was the result of the denial of that motion for bail.

Joseph Curcio—Defendant—By the Court

The Court: I am disinclined, Mr. Cohen, to certify that there is a question of law here. I honestly do not think there is one.

Mr. Cohen: In the light of the dissenting opinion of Judge Medina?

The Court: I have a great deal of respect for Judge Medina, but it is not the majority opinion.

Mr. Cohen: I am telling the Court that I am going to appeal and follow this through the courts.

The Court: I know you are. I assume you are going to do everything you said to me, that it was made in good faith, but I have to certify that in my opinion—or judgment, at least—there is a substantial question of law, and I would have to stultify (54) myself to say that. You do not want to ask me to do that?

Mr. Cohen: No, your Honor, but I think he should have his full right and exhaust all of his remedies.

The Court: I want him to exhaust all of his remedies.

Mr. Cohen: I think this case is somewhat—

The Court: Why don't you go up to the Court of Appeals?

Mr. Christy: I have it right here.

The Court: Go up and see Mr. Fusaro, the clerk in the Court of Appeals, and ask him what you actually need and how you can get a case like this up there.

Mr. Cohen: May I have one of the three go with me?

Mr. Christy: Yes.

Order of Noonan, *U.S.D.J.*

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Joseph Curcio, having appeared before the United States Grand Jury for the Southern District of New York on April 10, 12, and 17, 1956, and having refused to answer certain questions on the grounds that the answers might tend to incriminate him, and having been directed to answer said questions by the Honorable Gregory F. Noonan, United States District Judge for the Southern District of New York, on April 17, 1956, and the defendant having appeared before the United States Grand Jury for the Southern District of New York on April 17, 1956 and having refused to answer said questions as directed by the Court and having appeared before the Honorable Gregory F. Noonan on April 19, 1956, and having refused to answer said questions when put to him by the Court; and Arnold Cohen, Esq., counsel for the defendant, and Paul W. Williams, United States Attorney for the Southern District of New York, by Arthur H. Christy (Herbert M. Wachtell and Fioravante G. Perrotta), Assistant United States Attorneys of counsel for the United States of America having been heard, and due deliberation having been had thereon and upon all proceedings heretofore had herein; it is

ORDERED that the defendant Joseph Curcio be and he hereby is committed to the custody of the United States Marshal for the Southern District of New York, to (2) be

held in close confinement for a period of six months for contempt of court and that he may purge himself of said contempt by appearing before the United States Grand Jury and answering said questions as directed.

Dated: New York, N. Y., April 19, 1956.

/s/ GREGORY F. NOONAN
United States District Judge

Certificate of Noonan, *U.S.D.J.*

(3)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

In accordance with Rule 42(a) of the Federal Rules of Criminal Procedure I hereby certify that the following acts were committed in the presence and the hearing of the Court and constitute a contempt of the Court: On April 17, 1956, the defendant Joseph Curcio appeared before the United States Grand Jury for the Southern District of New York and refused to answer certain questions on the ground that the answers might tend to incriminate him. On the same date he was brought before me and in the presence of the Grand Jury and after hearing each of the said questions read and after hearing arguments by Arnold Cohen, Esq., counsel for the defendant, and Paul W. Williams, United States Attorney for the Southern District of New York, by Arthur H. Christy and Herbert M. Wachtell, Assistant United States Attorneys, of counsel, for the United States Attorney, I directed the defendant to answer those questions.

On April 19, 1956, the defendant appeared before the United States Grand Jury for the Southern District of New York and again refused to answer said questions. He was brought before me on April 19, 1956 and in the presence of the Grand Jury I put to him said questions which he again (4) refused to answer after having been directed to do so and failed to state any reason why the answers

would tend to expose him to criminal prosecution. The questions which were asked are as follows:

"Q. I am going to ask you some questions, including some that were put to you on Thursday which you declined to answer. Referring to the books and records of Local 269 of the International Brotherhood of Teamsters, have you at any time been in custody of those books and records ?

"Q. Mr. Curcio, have you ever had possession of the books and records of this local?

"Q. Did you have custody and control of these records last Thursday?

"Q. Do you have possession of hose records or any of them today?

"Q. Do you have custody and control of any of those records today?

"Q. Where are any of those records today, if you know?

"Q. Who has any of those records today, if you know?

"Q. Where were any of these records or all of these records two weeks ago today?

"Q. Where were any or all of these records a week ago Saturday?

"Q. Where were any or all of these records a week ago yesterday, Monday?

"Q. Where were any or all of these records this past Thursday?

"Q. Where are any or all of these records today?

"Q. Who, if you know, had any or all of these records a week ago Saturday?

"Q. Who had any or all of these records a week ago yesterday?

"Q. Who had any or all of these records today?

(5) Accordingly, I summarily committed Joseph Curcio to the custody of the United States Marshal for the Southern District of New York to be held in close confinement for six months for contempt of court and informed him that he could purge himself of the contempt by appearing before the said United States Grand Jury and answering the questions as directed.

/s/ GREGORY F. NOONAN
U. S. D. J.

Dated: New York, New York,
April 19, 1956.

Notice of Appeal

(6)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

JOSEPH CURCIO, Defendant-Appellant
137-07 Seventieth Avenue, Queens, New York

ARNOLD COHEN
Attorney for Defendant-Appellant
Office & P. O. Address
Two Lafayette Street
New York, New York

Offense—Contempt of Court

Pursuant to judgment and order of Gregory F. Noonan, United States District Judge, defendant-appellant on April 19, 1956, was deemed to be in contempt of Court and thereby confined to the custody of the United States Marshall for the Southern District of New York for a period of six months.

Defendant-Appellant is to be confined in the custody of the United States Marshall for the Southern District of New York as of 4 P.M., April 20, 1956.

I, the above named defendant-appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above stated judgment and order.

Dated: New York, N. Y., April 20, 1956.

ARNOLD COHEN
Attorney for Defendant-Appellant
Two Lafayette Street
New York 7, New York

Subpena for U. S. Grand Jury

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. 34-307

To Joseph Curcio
Local 269 — I. B. of T, C, W & H of America
1780 Broadway, New York, N. Y.

BY VIRTUE OF A WRIT OF SUBPENA, To you directed and herewith shown, YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grand Inquest of the Body of the people of the United States of America, for the Southern District of New York, at a District Court to be held at the U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District, on the 10th day of April, 1956, at 11:30 o'clock in the forenoon of the same day, to testify all and everything which you may know in regard to an alleged violation of Section 371, Title 18, U.S.C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

Dated the 6th day of April, 1956
By the Court,

PAUL W. WILLIAMS
United States Attorney

M 10-430
F. G. Perrotta — Rm 415

Note—*Report at Room* 413. In order to secure your witness fees and mileage, it is necessary that you shall *Retain This Card* and present same at the United States Attorney's Office, Room 413, upon each day on which you attend court as a witness.

Grand Jury Subpoena Duces Tecum

M10-430 34-307

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To JOSEPH CURCIO

Secretary-Treasurer or any Official of Local 269, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA,

1780 Broadway

New York 19, N. Y.

GREETING:

WE COMMAND YOU that all business and excuses being laid aside, you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court to be held at Room 514 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 10th day of April, 1956, at 10 o'clock in the forenoon, to testify and give evidence in regard to an alleged violation of Title 18, Section 371, United States Code, and not to depart the Court without leave thereof, or of the District Attorney, and that you produce at the time and place aforesaid the following:

1. The following books and records for the period from Jan. 1, 1955 to present:

   a. General ledger and any and all subsidiary ledgers maintained.

   b. Cash receipts book.

   c. Cash disbursement book.

d. Petty cash book.

e. Check register and/or check stubs; cancelled checks.

f. Minute books including charter.

g. Minutes of all meetings.

h. Correspondence files.

2. Any related records or books maintained in connection with welfare funds, banquets, testimonial dinners and journals from January 1, 1955 to present.

3. Names and addresses of all members including place of employment from Jan. 1, 1955 to present.

4. Names and addresses of all officials from Jan. 1, 1955 to present.

5. Names and addresses of all employees and agents whether full time or part time, permanent or temporary from Jan. 1, 1955 to present.

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

WITNESS, the Honorable WILLIAM BONDY, Chief Judge of the District Court of the United States for the Southern District of New York, in the City of New York, on the 6th day of April, in the year of our Lord, One Thousand Nine Hundred and Fifty-Six.

WILLIAM V. CONNELL
Clerk

PAUL W. WILLIAMS
United States Attorney for the
Southern District of New York.

Grand Jury Subpoena Duces Tecum

Note: *Report at Room* 413. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 413, upon each day on which you attend Court as a witness.

F. G. Perrotta
Assistant

Room 307C

THE NEW YORK TIMES

VOL. CV ¥35853 New York, Friday, March 23, 1956

Page 1, Cols. 2, 3

Teamster Leaders Seeking To Restrict Hoffa's Power

Union Board Is Expected to Veto $400,000 Loan Promised to I. L. A.

By A. H. RASKIN

Special to The New York Times.

HONOLULU, March 22—A move to check the fast-expanding power of James R. Hoffa developed today in the high command of the International Brotherhood of Teamsters.

The sponsors of the move expressed certainty that they would muster enough votes in the union's executive board at its meeting here next week to "put the brakes" on Mr. Hoffa's progress. The Detroit unionist, who ranks ninth in the list of eleven teamster vice presidents, has made himself the dominant figure in the union's affairs in the Midwest, East and South.

The first aim of his critics on the board will be to block a loan of $400,000 to the International Longshoremen's Association, which Mr. Hoffa negotiated. The pier union was expelled from the American Federation of Labor in

Continued on Page 20, Column 4

Lacey Begins a Suit Here to Deny Presidency of Council to O'Rourke

By STANLEY LEVEY

A court fight to keep John J. O'Rourke from taking the $25,000-a-year presidency of the Teamsters Joint Council was opened yesterday.

Martin T. Lacey, the incumbent, in a suit filed in Federal Court, warned that if Mr. O'Rourke were permitted to take office the council's 125,000 members would be "subject to the arbitrary and ruthless control and decision of gangsters, racketeers and others."

Mr. O'Rourke, the protégé of James R. Hoffa, Midwest teamster boss, was declared the winner of last month's deadlocked union election on Wednesday when sixteen challenged ballots were opened and counted. All sixteen went to Mr. O'Rourke and his six-man slate, giving him a five-vote victory over Mr. Lacey.

The first result of Mr. Lacey's

Continued on Page 20, Column 1

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LACEY FILES SUIT TO BAR O'ROURKE

Continued From Page 1

legal action was a temporary restraining order issued by Federal Judge Gregory F. Noonan. The directive preserved the status quo and forbade the council's executive board from taking any steps to disturb Mr. Lacey's incumbency.

The order will freeze council affairs until April 3. On that date the executive board will be required to show cause why a temporary injunction should not be issued.

Besides Mr. O'Rourke, Mr. Lacey's suit named as defendants the joint council, which is the governing body for fifty-seven teamster locals in the New York area, Mr. Hoffa, Dave Beck, international president; John S. English, international secretary-treasurer, and Louis Lufrano, secretary-treasurer of the council.

Mr. Lacey specifically charged that Mr. Hoffa "was an active and chief member of the common effort or conspiracy to rig or influence the election by fraud, deception and stratagem, as well as by intimidation and persuasion."

According to the papers in the suit, this was how Mr. Hoffa operated: "He established himself in a local hotel prior to the Feb. 14 election and required many delegates to visit him there so that he could convince them to vote for the O'Rourke slate."

So confident was Mr. Hoffa about the nature of the sixteen challenged ballots, Mr. Lacey alleged, that the day after the election he asserted that all sixteen would go to Mr. O'Rourke even though they had been sealed in individual envelopes.

Mr. Lacey's suit, which was filed by Godfrey P. Schmidt, his counsel, asserted also that to aid the O'Rourke slate "seven new and suddenly contrived locals" were chartered. None of the officers of these groups were known to be "genuine labor leaders," the suit said.

"Some [of the locals] were and are officered by criminals or racketeers," Mr. Lacey declared. "Some were located, according to their stationery, at nonexistent addresses. None were formed after just consideration or pursuant to constitutional allotment of jurisdiction. None gave any but fraudulent indication of the number of its membership."

These charges were in language similar to that used two weeks ago by District Attorney Frank S. Hogan. At that time he said "underworld forces are making a determined effort to capture control" of the joint council. As leaders of this drive he named John (Johnny Dio) Dioguardi and Anthony (Tony Ducks) Corallo, both of whom have prison records.

NEW YORK POST
Wednesday, January 25, 1956

The Phantoms

By Murray Kempton

A mixed bag of HOI and POLLOI is currently seeking to snatch control of the 175,000 member New York Joint Council of the International Brotherhood of Teamsters.

The stake is something more than the $25,000 job of Martin Lacey, the council's president; it is whatever hope there is of keeping James Hoffa, a man of the most flexible morals, from full control of the country's largest union.

There are 63 locals in the Joint Council. As things now stand, they are almost evenly divided betwen Lacey and John J. O'Rourke, the facade for the forces of darkness.

In November, O'Rourke's backers decided to put a little lead in the dice. They found some unknown friend in the international who agreed to charter seven new locals. These have applied to the joint council for membership; if they are permitted to vote in next month's election, they will cast 49 votes for O'Rourke, which could be a margin of safety.

Every local in the council, whatever its size, has seven votes in the Lacey-O'Rourke contest. The seven neophyte locals applied for membership on a grand total of some 350 members; they hope to win the election at a cost of $350 in cash per capita. And, such are the wonders of democracy that, if they are seated, they will cast 10 per cent of the votes while they represent at best less than two-tenths of one per cent of the members.

That may be an inflation. For, they are in most cases mere paper auxiliaries of locals of the United Auto Workers-AFL controlled by John Dio, a convicted extortioner and the only individual ever ordered out of the AFL by official action of its Executive Council.

• • •

Locals 363 and 651, both newly and duly chartered by the Teamsters International, have an address of record at 119 West Columbia St., Hempstead, L. I. (Even that statement is dubious: Local 651 feels so hopeless about its chances of communicating with employer or worker that it allowed the [redacted] its letterheads to botch its address as "11 Columbia St.," which does not even exist.)

A sign on the Columbia St. building reads Local 362-651 (I. B. of T.-AFL); it has been nailed over a similar sign proclaiming this as the headquarters of Local 228, (U. A. W.-AFL). Both the new and the old appear to be poltergeists; the employes of a driving school which is the only tenant say they have never seen an official of the local there.

The new Local 258 lists its address as 10 Park Av., Mount Vernon. That building has no sign or indication of the existence of a Local 258; the only union present is Local 228 (coin machines) of the Teamsters, an already seated member of the Joint Council. Sam Getlan, secretary-treasurer of Local 228, is applying for a seat in the Council as president of Local 258.

The secretary-treasurer of this particular figment is Henry Davidoff, convicted once of burglary, once of attempted extortion, and once of bookmaking.

• • •

Davidoff is already vice president of United Auto Workers-AFL Local 649, whose 800 members pay him in excess of $300-a-week and provide a Cadillac from the welfare fund. And Local 649 has its own phantom applicant for seven votes in the Teamsters' election; the new Local 269 of the I. B. of T. has its office at 649's headquarters and one Joseph Cucio is secretary-treasurer of both.

Early in December, the police raided John Dio's new public relations office at Equitable Research Associates at 250 W. 57th St. on the unfounded charge that it was a hangout for bookies. One of those found in the office was this same Joseph Cucio, who has two charters from AFL-CIO internationals and takes his case with a hoodlum.

Dave Beck, the bowl of jello who is the Teamsters' president of record, apparently is in no position to ask questions about this sort of thing. The Executive Council of the AFL-CIO should be. And, if it isn't, the Justice Dept. certainly is.

THE NEW YORK TIMES

VOL. CV #35037 New York, Wednesday, March 7, 1956

Page 1, Col. 4

U. S. JURY TO SIFT INDUSTRIAL CRIME

New Panel Is Told to Look Especially for Trucking and Garment Rackets

By EDWARD RANZAL

A sweeping investigation into charges of widespread racketeering in the trucking and garment industries was started yesterday by a new Federal grand jury.

Judge Archie O. Dawson told the panel of twenty men and three women they might find it necessary also to investigate other branches of trade and commerce "without regard to where the chips may fall."

United States Attorney Paul W. Williams described the inquiry as "a general crackdown on crime and racketeering in this city." He added that a number of "specific instances of racketeering" already had been brought to his attention by the Federal Bureau of Investigation.

"This information," he said, "will be presented immediately to this jury. There is no doubt that Federal crime and racketeering on a national scale exist in this city, and it is our intention to root it out."

Mr. Williams indicated that the investigation might take several months.

The garment industry is New

Continued on Page 28, Column 3

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U. S. JURY TO SIFT INDUSTRIAL CRIME

Continued From Page 1

York City's largest manufacturing activity, estimated at close to $2,000,000,000 annually.

Mr. Williams said he would be assisted in presenting the evidence to the grand jury by Assistant United States Attorney George S. Leisure Jr.

Judge Instructs Grand Jury

"We hear a great deal today about a substantial obstruction to the free flow of commerce by reason of tribute exacted by professional racketeers and by unscrupulous officers and agents of labor organizations who use the power of their organizations not for the benefit of the union members but for their personal individual gain."

He said recently published articles indicated that in the trucking and dress industries in New York "gangsters and racketeers have acquired control of unions and even of businesses for the purpose of extorting money for their individual benefit at the expense of workingmen and women and of the consumers who buy or utilize their products."

"If these accusations are true," he continued, "then the public is entitled to see that these illegal activities are uncovered, prosecutions ensue, and such intolerable conditions no longer be allowed to prevail.

"I would suggest that this grand jury make a careful investigation of charges of racketeering in these industries and in any other industries which come to your attention, without regard to where the chips may fall."

The jurist told the panel it was its duty to see that any criminal, racketeer, gangster or extortionist operating in the community and violating Federal law by interfering with the flow of interstate commerce was brought to justice.

THE NEW YORK TIMES

VOL. CV No. 35,844 New York, Wednesday, March 14, 1956

(P 53)

Page 1, Vol. 1 Page 27, Col. 1.

UNITED DRIVE SET ON CITY RACKETS

Williams, Hogan and Javits Act to Fight 'Invaders'

By EDWARD RANZAL

A combined effort by United States Attorney Paul W. Williams, District Attorney Frank S. Hogan and State Attorney General Jacob K. Javits to drive racketeers from New York industries was started yesterday.

Mr. Williams said all three had agreed to work together because racketeers were "trying to invade New York City and take over the full role of invaders in many industries."

The unified drive, Mr. Williams explained, will extend to all phases of racketeering in city industries, including the garment, trucking, food and small merchandise fields.

The Federal prosecutor declared that he and Mr. Hogan would use the "squeeze play" to ferret out the racketeers. Mr. Williams explained that if Mr. Hogan was unable to get two accomplice witnesses for a case as required under state law, he might take over because Federal law required only one accomplice as a witness.

He also said that if his office turned up evidence of embezzlement or theft, which are not Federal crimes, he would give the information to Mr. Hogan. Such evidence may come to Mr. Williams because Federal tax returns are available to him.

Mr. Javits has offered the full

Continued on Page 27, Column 1

PROSECUTORS MAP DRIVE ON RACKETS

Continued From Page 1

cooperation of his office and has opened his files to Mr. Williams. As a result, Assistant United States Attorney Arthur Christy, head of the criminal division, now is "poring over papers in Mr. Javits' office."

Among other things, Mr. Javits' office investigates possible monopolies in business in the state. He has indicated to Mr. Williams that some of these investigations have turned up evidence that would be of interest to the Federal prosecutor.

It was as a result of this that Mr. Williams widened his racketeering investigation into the food business.

"I have talked extensively with Mr. Hogan," he said, "and we have agreed to work together in all phases of our investigation, including that involving Louis B. Saperstein."

Saperstein, wealthy insurance broker, who was wounded critically last Saturday morning in Newark, was understood to have been cooperating with Mr. Hogan in an investigation involving union welfare funds.

"This is a unified drive on racketeers who are trying to invade New York City and trying to take over the role of invaders for the first time since the time of Tom Dewey, and all evidence seems to indicate that," Mr. Williams said.

Thomas E. Dewey served as District Attorney before he became Governor. He is now engaged in the private practice of law.

A week ago a Federal grand jury was impaneled to investigate charges of widespread racketeering in the trucking and garment industries. Since then the investigation has mushroomed, and a special grand jury will be sworn in tomorrow to assist in the inquiry.

Mr. Williams said he also was determined to see how far racketeers had penetrated into business on the retail level.

The Federal prosecutor explained that he was not going after organized labor and would not interfere or intervene in disputes between labor leaders.

The racketeer today, he said, is more sophisticated than his predecessors and knows better how to hide his crimes. The present breed is not so naive as to expose himself with book entries, he explained.

THE NEW YORK TIMES

VOL. CV #35,844 New York, Friday, March 16, 1956

Page 1, Col. 1

U. S. Racket Inquiry Extended to Foods

By EDWARD RANZAL

In a widening inquiry a special Federal grand jury was impaneled yesterday to investigate violence, extortion and racketeering in the food industry and small businesses.

"Racketeers, not of the stature of Lepke and Gurrah, but of their breed, have moved in, and the end result has cost consumers millions of dollars," United States Attorney Paul W. Williams said.

Louis (Lepke) Buchalter and Joseph (Gurrah) Shapiro were two hoodlums who terrorized the garment industry in the early Nineteen Thirties. Lepke was executed for murder and Gurrah died in Sing Sing Prison while serving an extortion sentence.

The Government's racketeering investigation started last week when a regular grand jury

Continued on Page 31, Column 5

Page 31, Col. 5

U. S. RACKET QUEST EXTENDED TO FOOD

Continued From Page 1

was told to look into such activities in the garment and trucking industries.

Another Special Panel

Because of the widening scope of the inquiry, Mr. Williams will have a second special panel sworn in on March 26. He anticipated that the investigation might take six months.

Mr. Williams said the Government already had subpoenaed fifty witnesses. He added that a number of other prospective witnesses had "conveniently" disappeared. The problem, he asserted, was to convince persons who have been victims to come forward.

The garment and trucking investigation is being handled by Assistant United States Attorney Arthur Christy, chief of the criminal division. Assistant United States Attorney Myles J. Ambrose is in charge of the food and small business inquiry.

Mr. Ambrose said that "the initial phase of the investigation will be a probe into the pickle industry; it started with kosher pickles, but is getting bigger all the time."

"We know that a unique type of racket is in operation in that industry," he continued, "and it has a lot to do with the fact that groups of employers band together to keep their businesses among themselves and they use labor unions to enforce that monopoly."

The food industry, Mr. Ambrose continued, is "most susceptible to racketeering because the goods it handles are perishable."

As for small businesses, he said, a "particularly vicious type of racketeering exists whereby a small plant is unionized and the employer pays union dues and funds to a non-existent welfare fund as a means of tribute to illegitimate unions."

He said most of the racketeering could be laid to a "group of illegitimate unions which are engaging in anything they can find which will be profitable."

In addressing the panel yesterday Federal Judge Archie O. Dawson said:

"Racketeering is not something new. It has simply developed new phases in modern days. In old medieval times, bandits would set themselves up along the crossroads of commerce and exact tribute from legitimate business men who wished to pass that way in the course of their commerce.

"Today, that same type of thing, which is called racketeering, goes on, but it goes on in a more subtle form.

"The exacting of tribute from business men for permission to carry on their legitimate business activities is a drain upon the whole community."

THE NEW YORK TIMES

VOL. CV #35860

New York, Friday, March 30, 1956

Page 1, Col. 2

Page 20, Col. 3

(p.56)

7 TEAMSTER UNITS FACE U. S. INQUIRY

New Rackets Grand Jury Will Focus on Gangsters —List of 16 Is Read

By EDWARD RANZAL

The primary concern of a newly created special Federal rackets grand jury will be an investigation of seven recently chartered teamster locals and their officers.

The core of the investigation into racketeering in the garment and trucking industries will, however, center on many known gangsters who operate under a cloak of respectability in both industries.

This became evident yesterday when United States Attorney Paul W. Williams read a list of sixteen names to prospective jurors before they were sworn in by Federal Judge Archie O. Dawson. One prospective juror was excused when he said he knew one of the men on the list.

Meanwhile, the regular March grand jury, which had been empowered to initiate the inquiry, returned its second racketeering indictment. It charged five truck company employes with stealing more than $100,000 worth of merchandise since 1954.

Although four witnesses had been subpoenaed to testify yesterday, only one was questioned by the new panel. Assistant United States Attorney Arthur Christy, in charge of the criminal division, is presenting evidence to the grand jury.

The seven new teamster locals will be investigated because of charges by Martin T. Lacey,

Continued on Page 20, Column 3

7 New Teamster Locals Facing Inquiry by Federal Racket Jury

Continued From Page 1

president of the Teamsters Joint Council.

Mr. Lacey recently lost a hotly contested union election for the presidency to John J. O'Rourke, protégé of James R. Hoffa, powerful Midwest teamster boss. However, Mr. O'Rourke has been restrained from taking office by a court suit brought by Mr. Lacey.

In his court action Mr. Lacey charged that the new locals were organized "for the purpose of rigging the election." He added that some of the locals "were and are officered by criminals or racketeers; some were located, according to their stationery, at nonexistent addresses."

Mr. Lacey further charged that "none of the officers of the newly chartered locals were known to be genuine labor leaders."

Last Monday Mr. Christy conferred with Mr. Lacey for several hours.

The sixteen names read by Mr. Williams to the grand jury represented union officials, business men and racketeers, some of whom were closely associated with Louis (Lepke) Buchalter and Jacob (Gurrah) Shapiro, gangsters in the early Thirties.

The 16 Key Names

Mr. Williams first read to the grand jury the names of Messrs. Hoffa, Lacey and O'Rourke. The others named were John DiGuardi, alias Johnny Dio, labor racketeer convicted of extortion; Joseph Stracci, alias Joe Stretch, a criminal with a long police record who has been active in nonunion garment shops.

Also Ben Kutlowitz, alias Tom Cutty, connected with nonunion garment companies; Ben Levine, manufacturer and one-time close associate of Lepke and Gurrah; Izzy Schwartz, union official with a long police record; Abe Chait, boss trucker and dress manufacturer with a long police record.

Also James Plumeri, alias Jimmy Doyle, prize fight owner with garment and trucking interests and a police record; Anthony Strollo, alias Tony Bender, notorious underworld character; Tom Lucchese, alias Three Finger Brown, manufacturer closely associated with underworld figures; Harry Strauss, alias Harry Strasser, a "front man" in the trucking industry with a police record.

Also Morris Shapiro, alias Little Sheppi, alleged collector for racketeers; Abe Gordon, president of Local 805 of the Teamsters; Albert Anastasia, linked with Murder, Inc.; Louis Lieberman, alias Scarface Louie, mobster convicted of extortion; Harry Davidoff, official of one of the new teamster locals, who has a criminal record, and Sam Berger, president of Local 102 of the International Ladies Garment Workers Union.

Strikes, Boycotts Threatened

No clear pattern has yet been established by the United States Attorney's office. It was noted, though, that the strong-arm methods of the past were no longer used. Instead, it was said, the racketeers are able to extort money from business men under the threat of illegal strikes and secondary boycotts.

Judge Dawson told the grand jury that "in our complex society there is nothing more inimical than racketeers preying on reputable business men and interrupting the free flow of commerce."

The five men indicted—they were charged with stealing women's dresses, piece goods, cloth and children's coats—were employes of the Yale Transportation Company of 460 Twelfth Avenue.

Wellington Newcombe, assistant United States Attorney, said the men had joined in a conspiracy to steal the merchandise from stations, depots, platforms, trucks and other vehicles.

The five, said to be drivers or platform men, were John Angelo, 37 years old, of 501 West Fifty-seventh Street; Pinkas L. Caldes, 36, of 160 Allen Street; Frederick Esposito, 26, of Hoboken, N. J.; Michael E. Gigante, 28, of 1919 Avenue X, Brooklyn, and George J. Liverani, 27, of 2810 Harway Avenue, Brooklyn.

They will be arraigned in Federal Court next Friday. If convicted they could receive a maximum of ten years and a $5,000 fine each.

MAN TO CONTEND WITH: MR. JIMMY HOFFA

He is strong man in a union that affects everyone

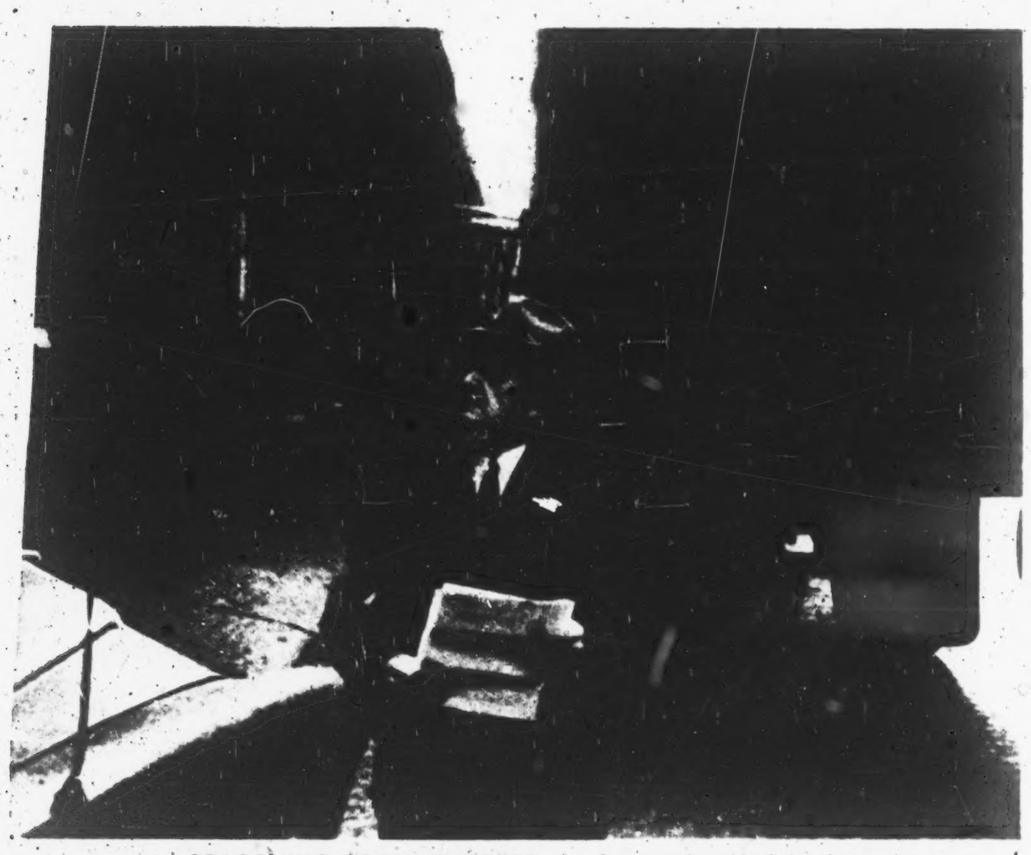
A bare four months after the merger of the A.F. of L. and the C.I.O. brought American labor to a historic peak of power, prestige and respectability (LIFE, Dec. 12), the labor movement faced a major challenge to its reputation and stability. The threat is a tough, cocky, ex-warehouseman from Detroit named Jimmy Hoffa, who boasts, "I got a list of arrests maybe as long as your arm." By title, Hoffa is the ninth vice president of the International Brotherhood of Teamsters. In fact he has all but eclipsed the power of the Teamsters' once formidable president, Dave Beck. Through the flow of goods its 1.3 million members control, the Teamsters is one of the most powerful of U.S. unions. It is also one of the unions most ridden by racketeers. Hoffa emerges as a man the whole country – not only the labor movement – will have to contend with.

Last week two facets of Jimmy Hoffa's ruthless and continuing drive to expand his power had highballed him into national prominence and had focused attention on his chummy relations with hoodlum elements in and out of the union. In Manhattan a federal grand jury was preparing to investigate Hoffa's recent attempt to force his own man in as head of the Teamsters' New York joint council. Charges were made in court that Hoffa had rigged the election by setting up phony locals (*next page*) which are controlled by ex-convicts.

At the same time the Teamsters' executive board, meeting in Hawaii, grappled with Hoffa's move to bring New York's longshoremen into his Teamster orbit. In 1953 the International Longshoremen's Association was expelled from the A.F. of L. for persistent corruption. This winter, as part of a mutual assistance pact which could give the Teamsters paralyzing control over virtually all East Coast truck and ship movement, Hoffa offered to lend the I.L.A. $400,000. George Meany, president of the combined A.F.L.-C.I.O., threatened to expel the Teamsters if the loan were made. Under pressure, the Teamsters' board quashed the loan. But it carefully gave Hoffa a go-ahead with his mutual assistance pact.

BEDECKED LIKE TOURISTS, TEAMSTERS' PRESIDENT DAVE BECK AND HIS

LOVE FEST WITH LONGSHOREMEN in New York found Hoffa in February – getting I.L.A. to take $400,000 loan. Joining hands from left: I.L.A. Organizer Teddy Gleason and President William Bradley; Hoffa; Johnny O'Rourke; Harold Gibbons of Teamsters Central Conference; Thomas Flynn, Eastern Conference.



SEARCHING FOR WITNESSES to subpoena for the federal grand jury investigation, Deputy U.S. Marshal James Shanahan explores New York truck center.

RIVAL, JIMMY HOFFA, CONFRONT EACH OTHER AT THE EXECUTIVE BOARD MEETING IN HAWAII

PICKED BY HOFFA to head New York Teamsters, Johnny O'Rourke is barred from office pending court hearing.

REJECTED BY HOFFA, Martin Lacey, incumbent head of New York Council, said to Void his defeat by O'Rourke.

CONTINUED 55

"JOHNNY DIO" (*right*), whose real name is John DioGuardia, and his uncle James Plumeri stood trial in 1937 for running an extortion racket in garment district. DioGuardia was convicted, got 3 to 5 year term, later did time for tax evasion. Hoffa's man Johnny O'Rourke admitted he has known Dio for 30 years.

HELPING HAND FROM RACKETEERS

Manhattan District Attorney Frank Hogan has helped spell out how Hoffa's techniques rigged the election of Johnny O'Rourke as head of the Teamsters' Joint Council. Hoffa's agents chartered seven new locals. Most, on checking (*right*), proved to be little more than letterhead units. All, says Hogan, are controlled by ex-convicts Johnny DioGuardia (*above*) and Anthony Corallo (*bottom*). They are chief among the characters (*top row*) whose roles in the union a federal jury will seek to pin down. Because of the uproar over the action, the votes of the phantom locals were impounded. But the Hoffa forces had already lined up some even stranger votes to defeat the popular incumbent, New York council president Martin Lacey. They cast seven from a local which had never paid dues, six from a Yonkers local whose president is appealing a conviction on extortion charges, one vote from O'Rourke's bodyguard, who is no union official but voted for a man who had died a few days earlier. These votes, now challenged in court by Lacey, gave O'Rourke his victory.

At least a dozen Teamsters officials have been convicted of major crimes since 1953. Asked if a stop-Hoffa movement was under way in the Teamsters, Dave Beck snorted, "I wish I had 40 more men like him."

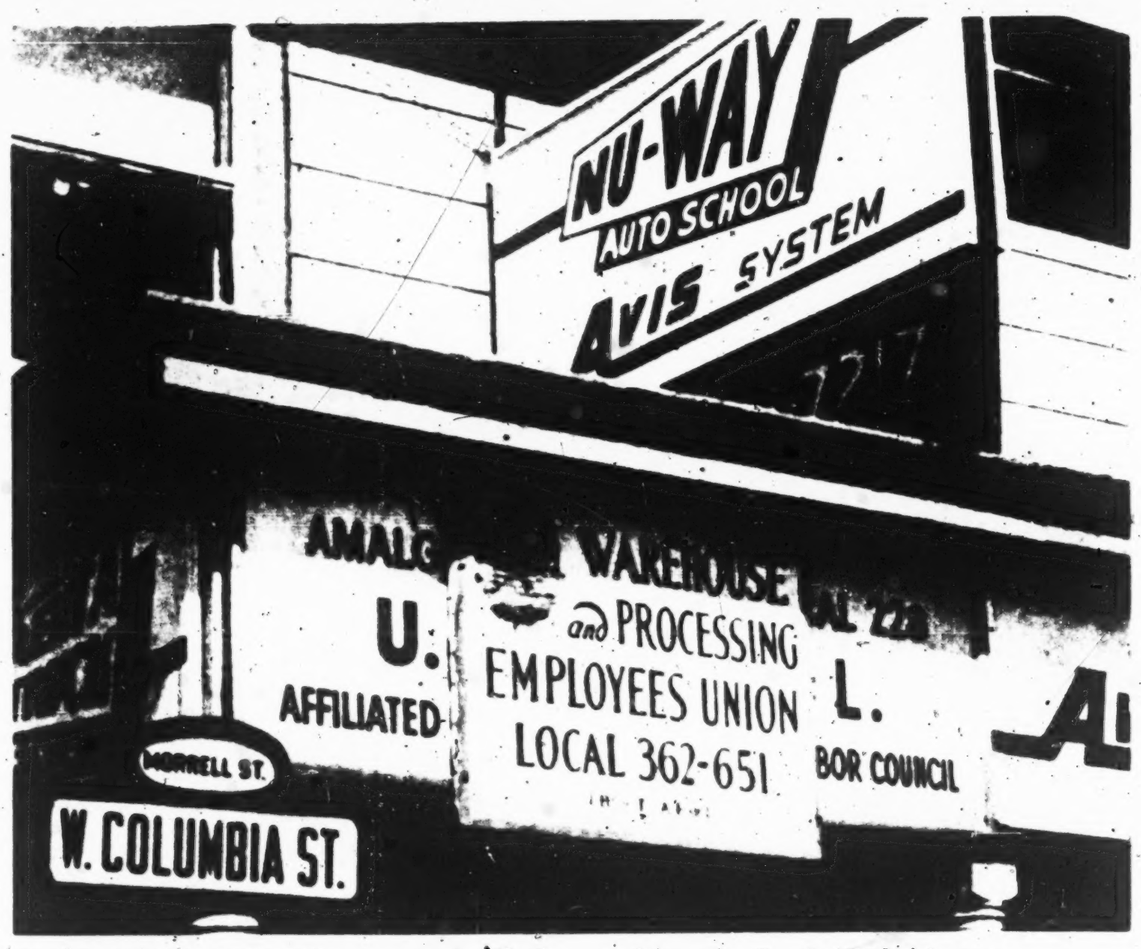
"TONY DUCKS" (*center*), whose real name is Anthony Corallo, stood for police picture in 1936 with associates John Linardi (*left*), Joe Benintende. He has a record of 12 arrests, but only one conviction—for narcotics possession. Vice president of Teamsters New York local 239, he is believed to control five other locals.

ON THE NEW YORK ROSTER

IRVING SLUTSKY, vice president of local 275 which Tony Ducks Corallo controls, has been indicted for extortion as official of clerks union.

SAM BERGER, no teamster but business manager of the Garment Workers' truck local, helped Dio get union charter in A.F. of L. Auto Workers.

HIDE-OUTS OF PHANTOM LOCALS



"LOCALS 362 AND 651," set up by Hoffa, rent littered office behind this car-rental agency in Hempstead, Long Island. Sign is only evidence of their presence.

HOFFA'S MIDWEST SUBORDINATES

LOUIS TRISCARO, head of Cleveland local 436, has assault robbery record. A House committee found he was taking 15% of union welfare fund.

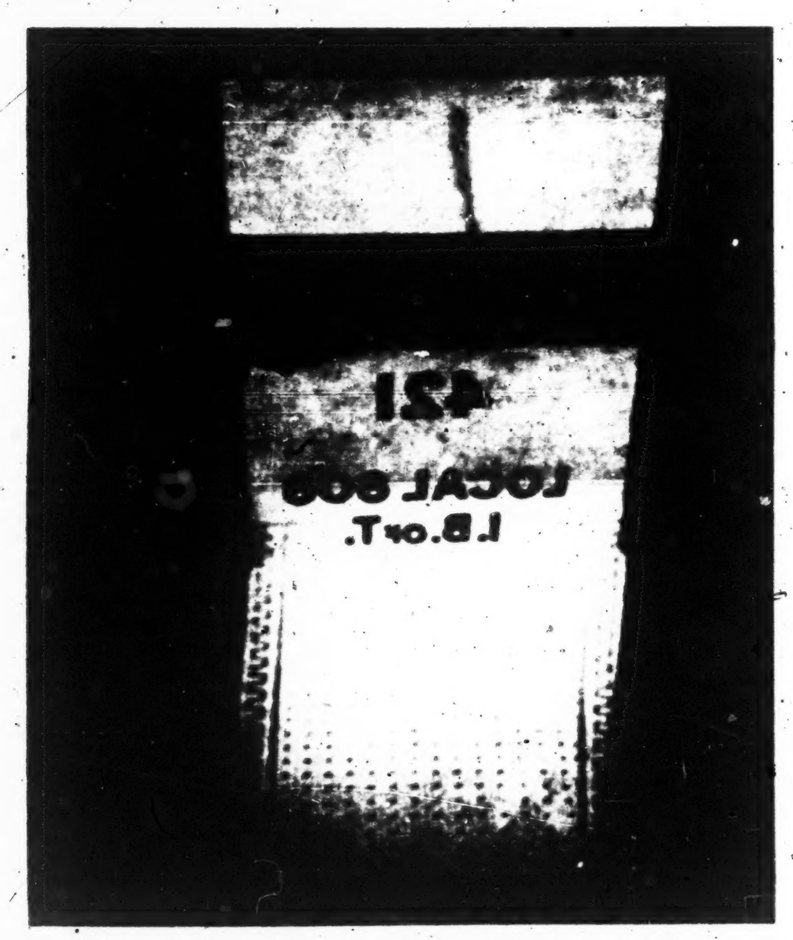
BARNEY BAKER, onetime secretary-treasurer of St. Louis local 405 who has been organizing in Buffalo, has a police record dating back to 1937.

JOSEPH STRACCI, also known as Joe Stretch, did time in Sing Sing for grand larceny and has been arrested for rape, burglary, assault, narcotics.

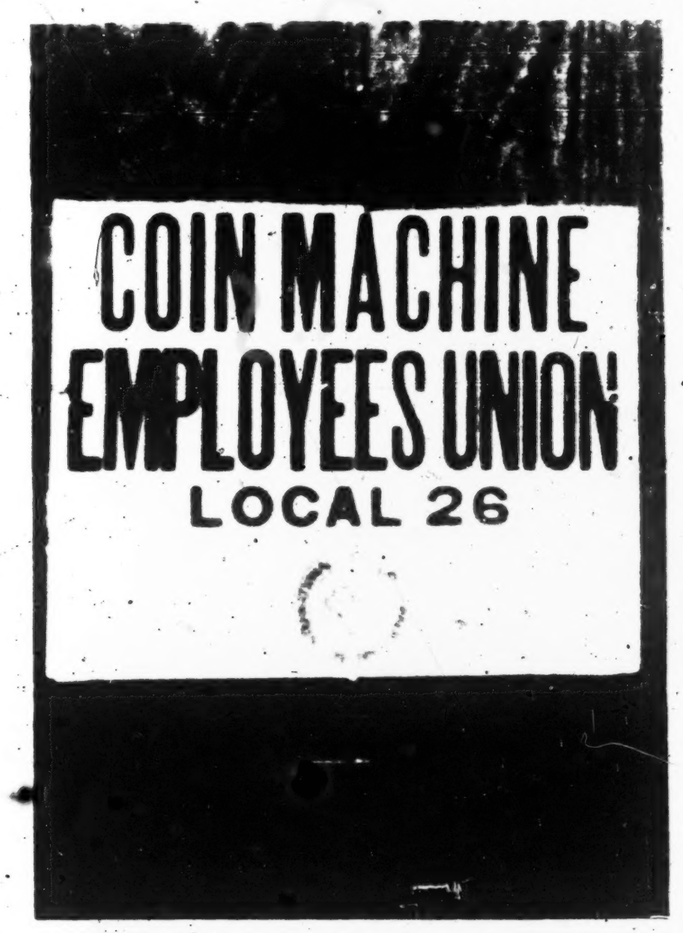
ABE GORDON, an official of local 805, spent $85,000 of union trust fund to buy property from a cousin. He voted for Hoffa's man, O'Rourke.

THOMAS LUCHESE, alias Three-Finger Brown, is leading underworld figure. The federal jury will check him for connections with Teamsters.

LOUIS LIEBERMAN got four years for extortion after posing as union agent. He has a long police record, many arrests for felonious assault.

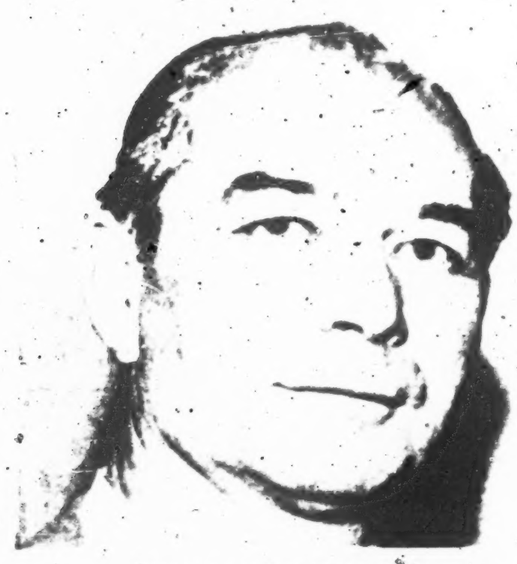


"LOCAL 295" has the same office as existing local 808 and same treasurer, a pal of Johnny O'Rourke.



"LOCAL 258" was listed at this address, but only a coin machine union sign shows on the door.

"LOCAL 269" is added to door of A.F. of L. auto worker local whose president has criminal record.



GERALD CONNELLY quit as organizer for Minneapolis local 548 jailed for bombing teamster's home; he faces trial for second bombing.

BRYANT FLICK, Connelly sidekick and an ex-organizer for Minneapolis local 548, was convicted of one bombing, faces trial for another attempt.

LAWRENCE THOMPSON, former business agent for local 571 at Cape Girardeau, Mo., is serving 12 years for extorting $15,000 from a contractor.

ERNEST ANDERSON heads Kansas City local 541. A former president of 541 was slain. Often arrested, he has been convicted of assault, theft.

[fols. 61-63] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Appellee's Appendix

Grand Jury Testimony

UNITED STATES GRAND JURY

SOUTHERN DISTRICT OF NEW YORK

Title 18 U. S. Code §371

Re Investigation of John Doe

TRANSCRIPT OF TESTIMONY

Witness: JOSEPH CURCIO.

Dates: April 10th, 12th, and 17th, 1956.

APPEARANCES:

Arthur H. Christy, Herbert M. Wachtell, Fioravante G. Perrotta, Assistant United States Attorneys.

[fol. 64] April 10, 1956.

JOSEPH CURCIO, called as a witness, first having been duly sworn by the Foreman, testified as follows:

By Mr. Christy:

Q. Will you give your full name, please?
A. Joseph Curcio.
Q. Mr. Curcio, where do you live?
A. 137-45 70th Road, Flushing, New York.
Q. What is your occupation?
A. Before making any further statements I would like to have my attorney present.
Q. I will advise you, Mr. Curcio, that this is a grand jury proceeding and you are not entitled to have your attorney present during this proceeding.
A. Well, I haven't had time to talk with him, as Mr. Perrotta knows.

Q. I will advise you that if any question is put to you by any of the Assistants or any members of the grand jury and you feel that the answer to that question will incriminate you you have a right to refuse to answer that question. I will also say to you that you realize that if you give the grand jury any deliberately untruthful answers it may lead to perjury action, or any wilful refusal to answer any questions may lead to a contempt action. Do you understand that?

A. Yes, sir.

Q. I will put the question to you again, Mr. Curcio. What is your occupation?

A. I still won't answer until I have advice from my attorney.

Q. What are the grounds on which you refuse to answer the question?

A. I would like to have the advice of my attorney before making any statement whatsoever or answering any questions.

[fol. 65] Q. I will advise you that that is not a sufficient reason for refusing to answer a question.

A. That is all I have to say.

The Foreman: You have just taken a pledge, an oath.

The Witness: I would like advice of counsel.

The Foreman: You should have gotten it before you came into the room.

The Witness: I spoke with Mr. Perrotta this morning. I was subpoenaed yesterday afternoon. I tried to contact my lawyer and he was in Albany.

(Mr. Christy, resuming:)

Q. Who is your attorney?

A. Arnold Cohen.

Q. C o h e n?

A. Yes.

Q. Where are his offices?

A. Two Lafayette Street.

Q. Have you made an effort to get in touch with your attorney today, Mr. Curcio?

A. No further questions to be answered, sir.

Q. Your attorney is in New York you know. You know that he is in New York, do you not?

A. I'd like my attorney here.

The Foreman: You couldn't have him in the room. No one can be in here.

The Witness: I have nothing further to say.

Q. Have you made an effort to call him today?

A. (No answer.)

[fol. 66] Mr. Christy: Mr. Foreman, I ask that you direct the witness to answer that question.

The Foreman: I am sorry, you are going to have to answer it.

Mr. Perrotta: Isn't it a fact that your attorney knows at the present time that you are before the grand jury?

Mr. Christy: Will you direct the witness to answer that question?

The Foreman: Will you answer the attorney, please?

The Witness: I have no statement to make.

The Foreman: You refuse to answer?

The Witness: I would like to have my attorney here.

The Foreman: Do you refuse to answer the specific question?

Mr. Christy: What did you say?

The Witness: I haven't said anything.

The Foreman: But you do refuse?

The Witness: Yes, sir.

The Foreman: One moment ago you took an oath, "so help you God" it ended with.

(Mr. Christy resuming:)

Q. At what time were you served with a subpoena yesterday?

A. I have no answer.

Q. Were you served with a subpoena yesterday? I think you indicated a few minutes ago that you were. Were you served with a subpoena yesterday?

A. I have no further answers.

[fol. 67] Mr. Christy: Mr. Foreman, I request that you excuse this witness for a few minutes.

The Foreman: You are excused.

Mr. Christy: And that he be directed to remain outside the grand jury room.

The Foreman: Will you please wait outside?

The Witness: Thank you.

(Witness leaves room and is later recalled.)

By Mr. Christy:

Q. Mr. Curcio, were you served with a subpoena?

A. I have no answer.

Q. When were you served with a subpoena for your appearance today?

A. I have no answer.

Q. Did you attempt to get in touch with your attorney yesterday?

A. I have no answer.

Q. Have you attempted to get in touch with your attorney today?

A. I would like to have my attorney here.

Q. You have indicated to these questions that you have no answer. What is the reason for that?

A. I would like my attorney present.

The Foreman: You mean in the room?

The Witness: I would like to talk with him.

The Foreman: Where?

The Witness: To confer with him.

The Foreman: On every question that would be submitted?

The Witness: To find out what my rights are. I don't know what my rights are here.

The Foreman: No one is allowed to have an attorney [fol. 68] in the room, that's obvious; that's factual. So you couldn't have him in the room with you.

The Witness: I would still like to confer with him.

The Foreman: Where, outside? You can't have him in here. If you had him outside and conferred with him, then what?

The Witness: I haven't had an opportunity to confer with him at all.

Mr. Christy: Have you attempted to get in touch with your attorney today?

The Witness: I have no answer.

By Mr. Wachtell:

Q. Do you mean that you refuse to answer the question?

A. I would like my attorney present.

Q. When you say you have no answer, do you mean that you are refusing to answer?

A. Yes.

By Mr. Christy:

Q. And every time you have said "I have no answer" you mean you refuse to answer?

A. No: I would like to have my attorney present and confer with my attorney. You are throwing legal stuff here and I don't know whether you are trapping me or not.

The Foreman: Up to this point there isn't——

The Witness: Up to this point, your honor, I haven't spoken with my attorney.

The Foreman: There are no questions that have any legal bearing. They are merely addresses and time.

[fol. 69] The Witness: I still haven't spoken with my attorney.

The Foreman: Mr. Christy advised you at the beginning, where there is a question where the advice of a lawyer is necessary, you can refuse to answer.

The Witness: I don't know what may be going on with this testimony, what my rights are and what I may answer and not answer, I don't know, and until I do know I am not going to make a statement.

Mr. Christy: Have you attempted to get in touch with your attorney today?

The Witness: I have no answers.

Mr. Christy: Would you excuse the witness and direct him to remain outside the grand jury room?

The Foreman: Yes.

(Witness excused.)

Witness was brought back in.

Foreman: Mr. Curcio, we're going to excuse you for today but we're going to direct that you come back Thursday, this week, April 12th.

Witness: Yes, sir.

Foreman: At 2:15.

Witness: Very good.

Foreman: With the books and records that were asked for in the subpoena duces tecum that you received.

Witness: Yes.

[fol. 70] Foreman: Which you acknowledged earlier. In the meantime we suggest to you that you take advantage of your own suggestion and get your attorney to talk with you.

Witness: That's all I want.

Foreman: Thursday.

Witness: Fine, 2:15?

Foreman: We'll expect you April 12th.

Witness: Yes, sir.

Foreman: Be sure those books and records are here. Those are the books and records asked for, in Local 269.

Witness: Uh-hum.

Witness goes out.

April 12, 1956.

JOSEPH CURCIO, recalled as a witness, having again been duly sworn by the Foreman, testified as follows:

By Mr. Wachtell:

Q. Will you state your full name, please, sir?

A. Joseph Curcio, C-u-r-c-i-o.

Q. Mr. Curcio, you were here the day before yesterday, is that true?

A. Yes, sir.

Q. On Tuesday?

A. Yes, sir.

Q. At that time you were directed to return today, is that correct?

A. Yes, sir.

Q. On Tuesday you requested that you be allowed to

[fol. 71] consult with an attorney, and perhaps bring an attorney with you to sit in the ante-room, is that correct?

A. Yes, sir.

Q. Have you done that?

A. Yes, sir.

Q. Is your attorney with you today?

A. An attorney from my attorney's office is here.

Q. What is the name of the attorney that is with you?

A. Mr. Pearlman. I believe P-e-a-r-l-m-a-n, but I am not sure of the spelling.

Q. What legal office is he from?

A. Arnold Cohen, C-o-h-e-n.

Q. Have you then consulted with Mr. Cohen, or Mr. Pearlman?

A. I have.

Q. And Mr. Pearlman is in the ante-room now, is that correct?

A. Yes, sir.

Q. Now, on Tuesday you were directed to bring with you today the books and records of Local 269 of the International Brotherhood of Teamsters, as itemized in a subpoena duces tecum that had previously been served upon you, is that correct?

A. Yes, sir.

Q. Have you done that?

A. No, sir.

Q. You are aware of the books and records to which that subpoena referred—did you read the subpoena?

A. Yes, sir.

Q. And you know what that subpoena called for?

A. Yes, sir.

Q. Are the records for which that subpoena called in your possession?

A. No, sir.

Q. In whose possession are those records?

A. In reference to that question, I would like to consult with my attorney.

[fol. 72] The Foreman: Why?

The Witness: He is my attorney, and I guess he knows the legal status better than I do, sir.

Q. Well, I think that——

Q. Your title is now United Automotive Workers AFL-CIO, is that correct?

A. Yes, sir.

Q. Mr. Reuther—you know to whom I refer?

A. Yes, sir.

Q. Unions are now United Automotive Workers, AFL-CIO?

A. Yes, sir.

Q. Both Internationals then have an identical name?

A. Yes, sir, but there has been no name decided upon between the two of them as yet.

Q. But they have remained independent within the framework of the nationwide labor federations?

A. Yes, sir.

Q. How long did you remain at 1780 Broadway on Monday?

A. I believe I was there until maybe six, seven o'clock that night.

Q. You say that from ten a.m. approximately onward on Monday you were working at your office? Again, what are your duties as secretary-treasurer of Local 269?

[fol. 90] A. If I might add, I was tending [*sic*] to my duties as an official of Local 269 on that Monday.

Q. You were doing nothing as an official of Local 269?

A. Not on that particular day, no.

Q. What was the last day that you did do something as an official of Local 269?

A. Well, I would like to state that Local 269 is a newly chartered local.

Q. Will you just answer the question, when was the last time that you did anything as an officer of Local 269, aside from your appearance here on Tuesday?

A. I refuse to answer that question.

Q. On what grounds?

A. On the grounds that it may tend to incriminate me.

Q. Mr. Foreman, I ask that the witness be directed to answer the question.

Foreman: You are directed to answer the question, Mr. Witness.

Witness: I'm just trying to——

Q. This question is, of course, to the best of your memory. No one is trying to trap you.

A. I do not have them in my possession.

Q. I think that this Grand Jury—and I say that subject to the Foreman's consent—will at reasonable intervals afford you the opportunity to consult with your attorney; and I suggest that on this occasion, Mr. Foreman, the witness be afforded that opportunity.

A. Thank you.

(Witness leaves room, and returns.)

Q. Mr. Curcio, have you now consulted with your attorney on the question?

A. Yes, sir.

Mr. Wachtell: Will the reporter be good enough to read back the question as to which the witness requested the opportunity to consult with his attorney.

(Read by reporter: "In whose possession are those records?")

The Witness: Is that the question?

Q. Yes.

A. I am sorry. I refuse to answer that question.

Q. Upon what grounds?

A. That it may tend to incriminate me.

Q. Are you an officer of Local 269 of the International Brotherhood of Teamsters?

A. Yes, sir.

Q. What post do you hold?

A. Secretary-treasurer.

[fol. 73] Q. How long have you held that post?

A. Since about November, 1955. That is not a definite date, that is——

Q. To the best of your recollection?

A. Yes, to the best of my recollection.

Q. You have had experience in the labor movement, Mr. Curcio, prior to that date?

A. Yes, sir.

Q. You've been with other labor unions. You've been an officer of other labor unions?

A. I must beg the indulgence once again, if I may speak with my attorney.

Foreman: Have you got another question?

A. I understand that, sir. I will maintain my privilege on that particular question.

Q. Mr. Foreman, may we have the record clear. Again I ask that the privilege be overruled and the witness directed to answer.

Foreman: You are directed to answer the question, Mr. Witness.

Witness: I'll maintain my privilege.

[fol. 91] By Mr. Perrotta:

Q. I believe that you said you were served with the two subpoenas between the hours of 3 and 4 this past Monday, is that correct?

A. When you say two subpoenas, you mean the card and the paper.

Q. Yes.

A. Yes, sir.

Q. Did you get in touch with anyone after you were served with those subpoenas?

A. I tried to reach my attorney.

Q. Did you try to get in touch with John Dioguardia after you received those subpoenas?

A. I tried to reach my attorney.

Q. That's not the question I asked you.

A. I refuse to answer on the grounds it may tend to incriminate me.

Q. You know John Dioguardia?

A. I refuse to answer on the grounds it may tend to incriminate me.

Q. Have you had conversations with John Dioguardia since this past Monday?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Q. Mr. Foreman, I request that the witness be directed to answer that question.

Foreman: The last question?

Mr. Perotta: The series of questions that I put to him.

Foreman: The series of questions. Will the stenographer read off the series of questions, and I direct the witness to answer the series of questions one at a time and please ask them one at a time.

Mr. Wachtell: I do not think, Mr. Foreman, that that's a question which warrants a consultation with an attorney.

Foreman: I've already consented to it this time.

Witness: Okay.

(Witness leaves Grand Jury room, then returns.)

Q. Mr. Curcio, have you now consulted with your attorney on that question?

A. Yes, sir.

Mr. Wachtell: Would the reporter be good enough to read that question.

(Question read back: "You've been an officer of other labor unions?")

A. Yes, sir.

Q. Have you ever been secretary-treasurer of any other labor union?

A. Yes, sir.

Q. In your experience as a labor union officer, would you say that it's usually the function of the secretary-treasurer of a local to maintain custody of the books and records of the local?

A. Would you repeat that, please.

[fol. 74] Mr. Wachtell: Would you repeat the question, please.

(Question read back: "In your experience as a labor union officer, would you say that it's usually the function of the secretary-treasurer of a local to maintain custody of the books and records of the local?")

Witness: May I again speak with my attorney?

Foreman: Do you really have to?

Witness: Yes, sir.

Foreman: You really don't know who keeps the books of this union?

Witness: Yes sir, I'm speaking with attorneys here. I'm not an attorney; I'm a labor man.

Q. Mr. Curcio, I think again I can say, and with the Foreman's permission, that you're not going to be permitted to obstruct the progress of this Grand Jury investigation by attempting to consult with your attorney

on every or every other question that's asked. You have no right to consult with your attorney at all during these proceedings, and if that permission is given to you, it's given as a favor and as a privilege granted or withheld by the Grand Jury and not as a matter of right. Now, I say that to caution you——

A. Well, then, may I ask a question?

Q. —to limit your requests to such intervals when you really will feel that it's imperative for you to speak with your attorney, or else the Grand Jury may be inclined, if they feel your claims are frivolous, to deny them entirely. Do you understand that?

A. No. I would like to ask a question.

[fol. 75] Q. Mr. Curcio, you're here to be asked questions and not to ask questions.

A. I would like to know if I'm here on trial or if I'm——

Q. Mr. Curcio, you're here as a witness who has been subpoenaed before a Grand Jury. You're not here on trial. You've been asked a question—whether in your experience the secretary-treasurer of a local labor union is normally the officer who keeps custody of the books and records. Now, will you please answer that question.

A. Do you refuse to allow me to speak to my attorney?

Q. Do you, on the basis of the statement that I've made that you'll be granted possibly very limited the privilege to consult with an attorney, repeat your request to consult on this question?

A. I refuse to answer on the ground that it may tend to incriminate me.

Foreman: Why don't you answer those questions?

Witness: Why don't he allow me the courtesy to see my lawyer? These fellows are lawyers, Mr. Foreman, not me.

Foreman: Actually, all these people are out to see justice.

Witness: So am I, please believe me.

Foreman: Actually, those questions where you think there's a legal part involved that really is serious and really has something that might incriminate you, for heaven's sake, go ahead and use your attorney. They'll all support you. On these questions, for heaven's sake, anybody—these are simple questions that aren't going to incriminate. Answer these, go ahead, and anything he asks you that you think is going to incriminate——

[fol. 76] Witness: Mr. Foreman, please believe me, I want to cooperate in every way possible, but by so doing or—I don't known the terms that these fellows use, believe me. I'm not a lawyer. I've never gone to law school and I don't know the terms that they bring about.

Foreman: I think it's possible that fear plays a big part in your answers; but actually, when you analyze the question, secretary and treasurer of a union or secretary-treasurer of a corporation ordinarily has the books. All he's asked —does it in your particular case. If it doesn't——

Witness: All I asked, if I can go out and speak with my attorney. It might take me two seconds or ten.

Q. You repeat that request on this question at this time to speak with your attorney?

A. If you'll so desire it, yes.

Q. You repeat your request?

A. Yes.

Mr. Wachtell: Mr. Foreman, I suggest that the witness be allowed to speak with his attorney.

Witness: Thank you, sir.

Foreman: As [*sic*] that attorney to give you some freedom, will you, to answer some of these questions.

(Witness leaves Grand Jury room, then returns.)

Q. Mr. Curcio, have you now again consulted with your attorney?

A. Yes sir.

Q. I'll repeat the substance of the question. In your experience as an officer of labor unions, would you say that [fol. 77] it's usual for the secretary-treasurer of a local labor union to maintain custody of the books and records of the local?

A. I refuse to answer on the ground that it may tend to incriminate me.

Q. Now, you understand, Mr. Curcio, that this question does not refer to what you've done as a secretary-treasurer, but refers to what is the normal and customary usage of labor unions. Do you understand that?

A. I can't say that I can answer for any other labor union.

Q. Then you don't know what the normal usage is. Is that what you're saying?

A. No, just in answer to the statement you just made.

Q. In the past when you—withdrawn. You've said that you in the past have been an officer of other labor unions, is that correct?

A. Yes sir.

Q. Were you ever secretary-treasurer of any other labor union?

A. Yes sir.

Q. Did you, of this other labor union, have custody of the books and records?

A. I refuse to answer on the ground that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I do not think that this is a proper claim of privilege and would ask that the witness be directed to answer the question.

Foreman: You are directed to answer the question, Mr. Curcio.

Witness: Then I must state that I would like to talk with my attorney.

Mr. Wachtell: I would suggest that the witness be afforded that opportunity.

Foreman: All right.

[fol. 78] Witness: Thank you.

(Witness leaves Grand Jury room, then returns.)

Q. Mr. Curcio, have you again consulted with your attorney?

A. Yes sir.

Mr. Wachtell: Would the reporter be good enough to read the question which is open.

(Question read back: "Did you, of this other labor union, have custody of the books and records?")

Witness: At this time I refuse to answer and I claim my privilege.

Q. You're refusing on the privilege not to incriminate yourself?

A. Yes sir.

Mr. Wachtell: Mr. Foreman, I do not think that the question—withdrawn.

Q. Will you indicate why not answering the question—why in some way you feel this question might tend to incriminate you.

A. I just refuse to answer——

Q. You'll not——

A. —on the ground that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I do not think that on the basis of the record there's a basis for the interposition of the privilege. I would ask that the witness be directed to answer the question.

Foreman: You are directed to answer that question, sir.

Witness: Well, I still take the same position.

[fol. 79] Q. You refuse to answer that question?

A. On the grounds that it may incriminate me.

Q. You realize that you've been ordered to answer that question and that your claim of privilege has been overruled by this Grand Jury?

A. No, I don't realize that. Then, once again, I would like to speak to my attorney.

Q. Mr. Curcio, you were asked the question. You refused to answer it. You were directed to answer it. You requested the opportunity to speak to your attorney. You spoke to your attorney. You returned. You were again asked the question. You again refused to answer it. You were again directed to answer it, and you've already consulted with your attorney on this very issue. Do you now, realizing that you have again been directed to answer this question, that your claim of privilege has been overruled by this Grand Jury, refuse to answer?

A. When I spoke with my attorney, I didn't advise him that I'd been denied—or that I'd been ordered to answer this question or that my claim——

Mr. Wachtell: To make the issue perfectly clear, Mr. Foreman, I suggest that the witness be permitted to consult with his attorney briefly.

Foreman: All right, Mr. Curcio.

Witness: Would you repeat that again, please?

Foreman: You're directed to answer the Grand Jury.

Witness: On the question—would you read it, please, if you don't mind?

Foreman: The exact question, would you read back.

(Question read back: "Did you, of this other labor union, [fol. 80] have custody of the books and records?")

(Witness leaves Grand Jury room, then returns.)

Mr. Wachtell: If the record may note, Mr. Foreman, that the—by the clock in the Grand Jury room—the witness left the Grand Jury room at seven and a half minutes after three and returned at 12 minutes after three. The brief interval for consulting with his attorney being four and a half minutes.

Q. Mr. Curcio, have you consulted with your attorney again?

A. Yes sir.

Q. Will you now answer the question, and I ask that the question be read again.

(Question read back: "Did you, of this other labor union, have custody of the books and records?")

Witness: On the direction of the Foreman, instructing me to answer, the answer is yes.

Q. Referring to the books—withdrawn. Referring to Local 269 of the International Brotherhood of Teamsters, to your knowledge are there any books and records of this local?

A. May I make another request to see my lawyer?

Mr. Wachtell: Mr. Foreman, in view——

Witness: I assure you I won't go over the time limit. I wasn't aware of any time limit.

Foreman: Go ahead this time.

Witness: Would you read the question back, please.

[fol. 81] Q. (Question read by reporter as follows: "Q. Referring to Local 269 of the International Brotherhood of Teamsters, to your knowledge are there any books and records of this local?")

(Witness leaves room and then returns.)

Mr. Wachtell: Mr. Foreman, may the record show that the witness left the grand jury room at 15 minutes after 3 o'clock by the clock in the grand jury room and returned at 19 minutes after 3, a span of four minutes.

Q. Mr. Curcio, have you consulted with your attorney again?

A. Yes, sir.

Q. (Question read to witness as follows: "Q. Referring to Local 269 of the International Brotherhood of Teamsters, to your knowledge are there any books and records of this local?")

A. Yes, sir.

Q. Have you at any time been in custody of those books and records?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Q. Now you say that the union does have books and records, is that correct?

A. To my knowledge.

Q. To your knowledge.

A. Yes.

Q. Are some of those records to your knowledge enumerated in the grand jury subpoena duces tecum that was served upon you?

A. I refuse to answer on the grounds that it might tend to incriminate me.

Q. Do you know—withdrawn. What are the books and records that the union does have?

A. I refuse to answer on the grounds that it might tend to incriminate me.

[fol. 82] Q. Now, you have said that the union does have books and records, is that correct?

A. Yes, sir.

Q. You say that you refuse to say what these books and records are?

A. On the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I think this is a completely improper and frivolous claim of privilege. I will ask that the witness be directed to answer the question.

The Foreman: You are directed to answer the question.

The Witness: Well, I don't know if I am taking up your time or I am annoying you people but, believe me, it is no pleasure for me to sit here either. Once again I'd like to talk to my attorney.

Mr. Wachtell: Mr. Foreman, in view of the repeated and persistent requests that have been made, the time span taken by the witness on each of these occasions, I think it is clear from this record that the witness is engaging in a course of tactics to obstruct the inquiry, and I ask that it be denied.

The Witness: I deny what the district attorney says emphatically. This is not true. But I will say again, I must repeat, I am not an attorney.

The Foreman: Do you understand the question? You admit to having books, and all he asked was a simple question.

The Witness: I admit knowing of books, Mr. Foreman. They are not in my possession.

The Foreman: You admit there were books?

The Witness: Yes, sir.

[fol. 83] The Foreman: And all he asked was what they consist of. Will you tell us what kind of books they were?

The Witness: I refuse to answer on the grounds that it may tend to incriminate me.

The Foreman: Was there a cash book, membership list book?

The Witness: Will you allow me to speak to my attorney and let him advise me?

The Foreman: No.

The Witness: I will stand on that then.

The Foreman: You are directed to answer the question, sir.

The Witness: I refuse to answer on the grounds it may tend to incriminate me.

By Mr. Wachtell:

Q. Mr. Curcio, do you understand that your claim of privilege has been overruled by the grand jury and that you have been directed to answer notwithstanding your supposed claim of privilege?

A. I understand that you won't grant me permission to speak to my attorney.

Q. Mr. Curcio, will you kindly answer the questions that are put to you and only the questions that are put to you? Do you understand that your claim of privilege has been overruled and that you have been directed to answer the question put to you, yes or no?

A. I have made a request to see my attorney.

Q. Do you understand that you have been directed to answer the question and that your request to consult with your attorney has been denied, yes or no?

A. Yes.

[fol. 84] Q. Do you nevertheless refuse to answer the question, yes or no?

A. I would still like to see my attorney.

Q. Do you refuse to answer the question at this time?

A. Without the advice of my attorney, yes.

Q. And you have previously consulted with your attorney about this very question?

A. No, sir; no, sir.

Q. You refuse to answer this question at this time, is that correct?

A. Without the advice of my attorney, yes.

Q. Mr. Curcio, have you at any time been in custody of any of the books and records of Local 269 of the Teamsters?

A. I refuse to answer on the grounds that it may tend to incriminate me.

By Mr. Perrotta:

Q. Mr. Curcio, when were you served with the two subpoenas in question?

A. I was here last Tuesday past—on a Monday afternoon at about three or four o'clock.

Q. You were served on Monday afternoon about two or three o'clock?

A. No, three or four o'clock.

Q. Were you in possession of the records of Local 269 of the International Brotherhood of Teamsters on Saturday past?

A. No, sir.

Q. Were you in possession of the records of Local 269 of

the International Brotherhood of Teamsters on Monday morning—I am speaking of the Monday on which you were served.

A. This question seems a little technical to me.

Q. Will you answer the question, please?

A. I refuse to answer on the grounds it may incriminate me.

Q. Mr. Curcio, is it not a fact that you answered my question with reference to your custody or possession of the records on Saturday past?

A. Yes, I did; yes, I did.

[fol. 85] Q. Did you obtain the custody or possession of these records since Saturday past?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Q. Mr. Curcio, where were you on this past Sunday?

A. Would you really like to know?

Mr. Perrotta: Mr. Foreman, I request you to direct the witness not to be frivolous in his answers to an Assistant United States Attorney and to the grand jury.

The Foreman: You are directed to answer the question.

The Witness: I was home all day with my family, with my wife and my son and other members of my family, in my home.

Q. On Sunday past, Mr. Curcio, did you see any individual who is a member of Local 269 of the International Brotherhood of Teamsters?

A. I refuse to answer on the grounds it may tend to incriminate me.

Mr. Perrotta: Mr. Foreman, will you direct the witness to answer that question?

The Foreman: You are directed to answer the question, sir.

The Witness: I refuse to answer on the grounds that it may tend to incriminate me.

Q. Mr. Curcio, did you go to the offices of Local 269 of the International Brotherhood of Teamsters on Monday morning, on the Monday on which you were served with the subpoenas in question?

A. Yes, sir.

[fol. 86] By Mr. Wachtell:

Q. To your knowledge where are the records that Local 269 does have?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Q. To your knowledge where were the records of Local 269 a week ago today?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I would ask that the witness be directed to answer the last question.

The Foreman: You are directed to answer the last question, Mr. Witness.

The Witness: May I speak with my attorney?

Mr. Perrotta: Mr. Foreman, might that privilege be granted?

The Foreman: Yes.

(Witness leaves room and then returns.)

Mr. Wachtell: May the record show that the witness has been absent from the grand jury room for five minutes?

Mr. Reporter, will you please read the question that is presently open?

(Question read as follows: "To your knowledge where were the records of Local 269 a week ago today?")

The Witness: I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer the question.

The Foreman: You are directed to answer the question, Mr. Witness.

[fol. 87] The Witness: I will assert my privilege.

(Mr. Wachtell resuming:)

Q. Mr. Curcio, where were the records of Local 269, if you know, on Saturday?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer the question.

The Foreman: You are directed to answer that question, Mr. Witness.

(No answer.)

Q. Mr. Curcio, you have said that you were not in possession of these records on Saturday, is that correct?

A. Yes, sir.

Q. Who was in possession of these records on Saturday?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask that the privilege be overruled and that the witness be directed to answer the question.

The Foreman: You are directed to answer the question, Mr. Witness.

The Witness: I will claim my privilege.

Q. Mr. Curcio, where were you when you were served with these subpoenas?

A. In my office.

Q. Where is your office?

A. 1780 Broadway, New York City.

Q. Is this the office of Local 269 of the Teamsters?

A. Yes, sir.

[fol. 88] Q. This was on Monday afternoon?

A. Yes, sir.

Q. How long had you been in your office?

A. Most of the day.

Q. How long had you been in your office, when did you get there?

A. I can't state exactly. I would say about ten o'clock in the morning.

Q. What were you doing there?

A. Following out my normal duties.

Q. What are your duties as secretary-treasurer of Local 269?

A. I must state that Local 269 shares an office with another local union.

Q. What local is that?

A. That's Local 649 of the United Automobile Workers, American Federation of Labor.

Q. Are you secretary-treasurer of Local 649?

A. I am the president.

Q. You are the president of Local 649?

A. Yes.

Q. Is Local 649 of the United Auto Workers affiliated with any International union?

A. Yes, sir.

Q. Any International federation?

A. With the American Federation of Labor.

Q. American Federation of Labor,—I assume you are aware, has merged with the Congress of Industrial Organizations?

A. Yes, sir.

Q. Is Local 649 affiliated with the new AFL-CIO?

A. Yes, sir.

Q. Is Local 649 Affiliated with the United Automotive Workers?

A. Yes, sir.

Q. Is the United Automotive Workers, formerly AFL, now merged with the United Auto Workers, formerly CIO?

A. I didn't follow that, sir.

[fol. 89] Q. (Read to witness as above.)

A. By that do you mean are both United Auto Workers AFL and CIO together?

Q. Yes.

A. As one International?

Q. Yes.

A. No, sir.

Q. Are there then two separate United Automotive Worker Internationals within the AFL-CIO at this time?

A. Yes.

Q. They both go by the same name?

A. Yes, sir.

Q. Is there any way to identify one from the other by name?

A. We are the United Auto Workers, American Federation of Labor, with the original charter that was issued at the start of the organizational drive in this particular industry.

(Stenographer reads:

"Q. Did you try to get in touch with John Dioguardia after you received those subpoenas?")

[fol. 92] Witness: I maintain my privilege.

Mr. Perrotta: Would you read the next question, please?

(Stenographer reads: "You know John Dioguardia?")

Witness: I maintain my privilege.

Q. Did John Dioguardia order you not to come down or, rather, order you not to produce the books and records of Local 269?

A. I refuse to answer on the grounds it may tend to incriminate me.

Q. Have you seen John Dioguardia since Monday past?

A. I refuse to answer on the grounds it may incriminate me.

Q. Do you know John O'Rourke?

A. I refuse to answer on the grounds it may tend to incriminate me.

Q. Mr. Foreman, may I request that the witness be directed to answer that question?

Foreman: The last one? You're directed to answer the last question, Mr. Witness. Will you repeat the last question, please?

(Stenographer reads:

"Q. Do you know John O'Rourke?")

Witness: I maintain my privilege.

Mr. Perrotta: Mr. Foreman, may I request that he be directed to answer whether or not he knows John O'Rourke?

Foreman: You are directed, Mr. Witness, to answer the question, do you know or do you not know John O'Rourke?

[fol. 93] Witness: I refuse to answer on the grounds it may tend to incriminate me.

By Mr. Wachtell:

Q. Mr. Curcio, have you ever seen any of the records of Local 269 of the Teamsters?

A. Yes.

Q. When was the last time that you saw any of these records?

A. I don't remember.

Foreman: Approximately?

Witness: I don't remember. I wouldn't like to venture a statement on it.

Q. To the best of your recollection when is the last time that you have seen any of the records of Local 269?

A. I can't say; I don't remember.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer the question.

Foreman: You are directed to answer the question, Mr. Curcio.

Witness: I can't remember.

Q. Was it one year ago?

A. No, sir.

Q. Was it yesterday?

A. I can't remember.

Q. You do not know, you cannot remember whether you saw any of the records of Local 269 yesterday?

A. May I speak with my attorney, please?

Foreman: That's a pretty simple question. That's no trap.

Witness: They're leading up to something. Well, I would like to know what to do.

[fol. 94] Foreman: Did you see anything yesterday in the way of those records, really?

Witness: Yesterday, no.

Q. Did you see them Tuesday, any of the records of Local 269?

A. No.

Q. Did you see any of the records of Local 269 on Monday?

A. No.

Q. Did you see any of the records of Local 269 on Sunday?

A. No.

Q. On Saturday?

A. No.

Q. On Friday?

A. I don't remember.

Q. You don't remember whether you saw them on Friday, is that correct?

A. Yes, sir.

Q. Were you in the possession of any of the records of Local 269 this past Monday?

A. No, sir.

Q. No?

A. No, sir.

Q. Were you in custody or control of any of the records of Local 269 on Monday?

A. No, sir.

Q. Where were the records of Local 269 on Monday, if you know?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer this question and that the supposed claim of privilege be overruled.

Foreman: You are directed to answer.

Witness: I'll maintain my privilege.

By Mr. Perrotta:

Q. Mr. Curcio, have you said that you were not in possessions of the records on this past Monday, the day on which you were served?

A. Yes.

[fol. 95] Q. Is it part of your testimony that you did not see these records on that same day?

A. Yes, sir.

By Mr. Wachtell:

Q. Do you know who was in possession of the records of Local 269 on Monday?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer the question.

Foreman: You're directed to answer the question, Mr. Curcio.

Witness: I maintain my privilege.

Q. Mr. Curcio, have you seen any of the records of Local 269 today?

A. No, sir.

Q. Do you know where any of the records of Local 269 are today?

A. I refuse to answer on the grounds it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman,——

Foreman: You are requested—directed to answer the question.

Witness: I maintain my privilege.

Q. Mr. Curcio, who is—withdrawn. Do you know who has any of the records of Local 269 at this time?

A. I refuse to answer on the grounds it may tend to incriminate me.

Mr. Wachtell: I ask that the witness be directed to answer the question.

[fol. 96] Foreman: You are directed to answer the question.

Witness: I maintain my privilege.

Q. Do you know where any of the records of Local 269 are at this time?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask——

Foreman: You are directed to answer the question.

Witness: I'll maintain my privilege.

Q. Mr. Curcio, you are aware that if you persist in your refusals to answer proper questions that are put to you that you may be held in contempt of this court. Do you understand that?

A. From what you tell me I do.

Q. Do you still refuse to answer these questions?

A. Yes, sir.

Q. Mr. Curcio, how many members are there in Local 269?

A. I refuse to answer that question.

The Foreman: Can you give an approximate amount?
Witness: No, sir.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer the question.
Foreman: You are directed to answer the question, Mr. Curcio.
Witness: I maintain my privilege.

Q. You refuse to say how many members there are?
A. I maintain my privilege.
[fol. 97] Q. Do you know who the officers of Local 269 are?
A. I refuse to answer.
Q. On what grounds?
A. That it may tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask that the witness be directed to answer the question.
Foreman: You're directed to answer the question, Mr. Curcio.
Witness: I maintain my privilege.
Q. You understand that you have no privilege. Do you still refuse to answer the question?
A. Yes, sir.

By Mr. Perrotta:

Q. Mr. Curcio, do you know someone by the name of James Hoffa?
A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Perrotta: Mr. Foreman, I request that the witness be directed to answer the question.
Foreman: You are directed to answer.
Witness: I maintain my privilege.

Q. Mr. Curcio, what was the last occasion on which you had conversations with Mr. Hoffa?
A. I refuse to answer on the grounds it may tend to incriminate me.

Mr. Perrotta: Mr. Foreman, I request——
Foreman: You are directed to answer the question.

Witness: I maintain my privilege.

[fol. 98] Q. Mr. Curcio, do you know a James Hoffa who is Vice-president of the International Brotherhood of Teamsters?

A. I refuse to answer that on the grounds it may tend to incriminate me.

Q. Mr. Chairman, may I have a direction.

Foreman: You are directed to answer the question, Mr. Curcio.

Witness: May I have a little conference?

Foreman: Yes.

Witness: Thank you.

Foreman: But short.

Witness: Yes.

Witness goes out of room.

Witness returns:

Foreman: Will the stenographer please read back the last question to the witness?

(Stenographer reads: "Q. Mr. Curcio, do you know a James Hoffa who is Vice-president of the International Brotherhood of Teamsters?")

Witness: I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Perrotta: Mr. Foreman, will you direct the witness to answer.

Foreman: You are directed.

Witness: I'll maintain my privilege.

Q. Mr. Curcio, approximately at what time was Local 269 formed?

A. To the best of my recollection, about November of 1955.

Q. Mr. Curcio, did you have conversations with John [fol. 99] Dioguardia with respect to the formation of Local 269?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Perrotta: Mr. Foreman, may I have a direction?

Foreman: You are directed to answer the question, Mr. Curcio.

Witness: I'll maintain my right.

Q. Mr. Curcio, was John Dioguardia the one who suggested the formation of Local 269?

A. I refuse to answer on the grounds that it may tend to incriminate me.

Mr. Perrotta: May we have a direction on that, Mr. Foreman?

Foreman: You are directed.

Witness: I maintain my privilege.

Q. Mr. Curcio, is this your signature on this photostat that I show you—first, may I have it marked as Grand Jury Exhibit 3. (So marked). Mr. Curcio, I show you Grand Jury Exhibit 3 and I ask you, sir, if that is your signature on the letter, which is Grand Jury Exhibit 3?

A. It looks like it.

Q. Mr. Curcio, on the lower left hand of grand jury Exhibit 3, first page, appear two sets of initials: JC in caps, a diagonal mark and then in caps also the initials MW. I ask you, Mr. Curcio, who is MW?

A. My secretary; name is Mrs. Mildred Warsauer. I believe that's the correct spelling.

Q. Miss or Mrs.?

A. Mrs.

Q. How long has Mrs. Warsauer been your secretary?

[fol. 100] A. Well, she's not my secretary. I guess I used the wrong phrase. She's a girl that works in my office.

Q. Is that the office at 1780 Broadway?

A. That's right.

Q. Does she receive a salary?

A. Yes, sir.

Q. Does she receive a salary from Local 269?

A. No, sir.

Q. Does she receive a salary from Local 649?

A. Yes, sir.

Q. Does she do secretarial work for Local 269?

A. Yes—excuse me?

Q. Does she do secretarial work for Local 269?

Foreman: Full time or part time, at any time?

Witness: She draws no salary from Local 269.

Q. Does she do any work for Local 269?

A. Let me say this. If I had asked her to write a letter for me, she would.

Q. When you say "for you", do you mean for Local 269?

A. Yes, sir.

Q. Well, then, on occasion she would do work for Local 269?

A. That's right.

Q. Does Local 269 have any—a paid stenographer of its own?

A. No, sir.

Q. Does Local 269 have any paid employees?

A. No, sir.

Q. Do you draw a salary from Local 269 as Secretary-Treasurer?

A. No, sir.

Q. Do any of the officers of Local 269 draw salaries?

A. No, sir.

Q. Does Local 269 have any payroll?

A. No, sir.

Q. Does Local 269 collect any dues from members?

A. I refuse to answer that question.

[fol. 101] Mr. Perrotta: Mr. Foreman, I ask that the witness be directed to answer the question.

Foreman: You're directed to answer the question.

Witness: I'll maintain my privilege.

Q. Does Local 269 have a bank account?

A. I refuse to answer that on the ground it may incriminate me.

Mr. Perrotta: Mr. Foreman, I ask that the witness be directed to answer the question.

Foreman: You are directed to answer the question, Mr. Curcio.

Witness: I'll maintain my privilege.

Q. Where was Grand Jury Exhibit—withdrawn. Where was the original of Grand Jury Exhibit 3, the photostats, typed, if you know?

A. At my office.

Q. 1780 Broadway?

A. Right.

Q. How many typewriters do you have at that office?

A. I would say two.

Q. Mr. Curcio, I show you Grand Jury Exhibit 3 again and ask you to note that this letter is on a letterhead of Local 269, is that correct?

A. Yes, sir.

Q. Have you seen other pieces of paper printed bearing that captioned heading, letterhead?

A. Yes, sir.

Q. Did you order the printing of those letterheads?

A. Yes, sir.

Q. When?

A. I should say back in November or December.

Q. What printer did you order those letterheads from?

A. I refuse to answer that question.

[fol. 102] Q. On what grounds?

A. May I have a short conference, please?

Mr. Perrotta: Mr. Foreman, I request that this request be denied?

Witness: I just want to make it certain for myself.

Foreman: That's a simple question.

Witness: Just let me check it a second.

Foreman: Hurry up back; make it short.

(Witness goes out of room.)

(Witness returns.)

Q. Mr. Curcio, have you again consulted with your attorney? I believe it is over five minutes since you left the Grand Jury room.

A. Yes, sir.

Mr. Wachtell: May we have the last question that is open, read, please.

(Read by reporter MTC: "What printer did you order those letterheads from?")

The Witness: I believe they go under the name of Daniel Press.

Q. Where is Daniel Press?

A. They are in New York City. I don't know the exact address.

Q. Where, to the best of your knowledge, is their location?

A. Downtown somewhere, I believe.

Q. Where?

A. I don't know; it is in the city.

Q. Did you go there in person, or did you 'phone them?

A. A telephone call.

Q. At the time—withdrawn—how many letterheads did [fol. 103] you at that time order for Local 269?

A. I believe about five hundred.

Q. Have you ever ordered more since that time?

A. No, sir.

Q. At the time that you ordered these letterheads for Local 269, did you order any other stationery of Daniel Press?

A. The necessary stationery that is used in a local union.

Q. Envelopes?

A. Envelopes.

Q. Other stationery for Local 269?

A. Yes, sir.

Q. Did you order any stationery for any organization other than Local 269?

A. Maybe for 649; I just don't remember.

Q. Did you order any stationery for any organizations other than Locals 269 and 649?

A. Not to my knowledge.

Q. Did you order any stationery for Local 284 of the International Brotherhood of Teamsters?

A. Not to my knowledge.

Q. Have you at any time ordered any stationery for Local 284?

A. Not to my knowledge.

Q. Did you at that time, referring to your ordering of stationery for Local 269, order any stationery for Local 258 of the Teamsters?

A. Not to my knowledge.

Q. Have you ever ordered any stationery for Local 258?

A. Not my knowledge.

Q. Did you at that time order any stationery for Local 651 of the Teamsters?

A. Not to my knowledge.

Q. Well, you know whether you did or not, to all of these questions.

A. Not to my knowledge.

Q. Does that mean "No"?

A. That is what I mean, not to my knowledge.

Q. You would know if you did order stationery?

[fol. 104] A. I don't know. I don't think it would be that important for me to remember anything like that. First of all, 269 is a newly chartered local, that just got started, and I sent in an order to a stationer.

Q. Is it your answer that you do not remember whether you also ordered stationery for Local 258, Local 651—is that your answer?

A. Not to my knowledge.

Q. Are you saying that you do not remember?

A. I am saying not to my knowledge.

Q. Does that mean "No"?

A. I can only put it the way I know, sir; and that is, not to my knowledge.

Q. Mr. Curcio, there are three answers you can give to these questions: "Yes," "No" or you "don't remember". Now, I will repeat the question:

Have you ordered any stationery for Local 258? Will you please give one of those three answers.

A. I don't remember.

Q. Have you at any time ordered any stationery for Local 651 of the Teamsters?

A. I don't remember.

Q. Have you at any time ordered any stationery for Local 362 of the Teamsters?

A. I don't remember.

Q. Do you know a man named Armondo, A-r-m-o-n-d-o, Simontacci, S-i-m-o-n-t-a-c-c-i?

A. I refuse to answer that question on the grounds that it might tend to incriminate me.

Mr. Wachtell: Mr. Foreman, I ask a direction.

The Foreman: You are directed to answer that question.

The Witness: I maintain my privilege.

[fol. 105] Q. Do you know a man named Basil, B-a-s-i-l, Koschel, K-o-s-c-h-e-l?

A. I refuse to answer on the ground that it may tend to incriminate me.

Mr. Wachtell: I ask a direction.

The Foreman: You are directed to answer the question.

The Witness: I maintain my privilege.

Q. Do you know a man named Philip, P-h-i-l-i-p Kazansky, K-a-z-a-n-s-k-y?

A. I refuse to answer on the ground it may tend to incriminate me.

The Foreman: You are directed to answer that question.

The Witness: I maintain my privilege

Q. Do you know a man named Frank Easton, E-a-s-t-o-n?

A. I refuse to answer on the grounds it may tend to incriminate me.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Do you know a man named John Korsizor, K-o-r-s-i-z-o-r?

A. I refuse to answer on the grounds it may tend to incriminate me.

The Foreman: You are directed to answer that question, Mr. Curcio.

The Witness: I maintain my privilege.

[fol. 106] Do you know a man named Rosario, R-o-s-a-r-i-o Catalano, C-a-t-a-l-a-n-o?

A. I refuse to answer on the grounds it may tend to incriminate me.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Do you know the identity of any of the officers, other than yourself, of Local 269?

A. I refuse to answer on the grounds it may tend to incriminate me.

Mr. Wachtell: I ask a direction.

The Foreman: You are directed to answer that question, Mr. Curcio.

The Witness: I maintain my privilege.

By Mr. Perrotta:

Q. Mr. Curcio, I have one last question: Will you give us the names of the people, other than Mr. Pearlman, who accompanied you here today?

A. Mr. Arnold Cohen, who is my legal counsel.

Q. And the other names?

A. I don't know the other fellow. He is a friend of Mr. Cohen, I believe.

Q. Thank you, sir.

Mr. Perrotta: Mr. Foreman, would you direct that the witness be required to return on Tuesday, at two-fifteen.

The Foreman: You are directed to return, Mr. Curcio, next Tuesday, here, the same room, at two fifteen.

[fol. 107] The Witness: Do I report to the room downstairs or come right here?

Mr. Wachtell: The witness is to report to the ante-room outside of this Grand Jury room.

The Witness: Thank you.

(Witness excused)

April 17, 1956.

Joseph Curcio, residing at 137-45 70th Road, Flushing, New York, after having been first duly sworn by the Foreman, testified as follows:

By Mr. Wachtell:

Q. Mr. Curcio, you appeared before this Grand Jury on Thursday; is that correct, April 10th?

A. Yes, sir.

Q. Is your lawyer with you today?

A. Yes, sir.

Q. What is his name?

A. Mr. Arnold Cohen.

Q. I am going to ask you some questions, including some that were put to you on Thursday which you declined to answer. Referring to the books and records of Local 269 of the International Brotherhood of Teamsters, have you at any time been in custody of those books and records?

The Witness: I would like to make a statement if I may at this time.

Mr. Wachtell: Mr. Curcio, will you please answer the question that was put to you.

[fol. 108] The Witness: May I make this statement?

Mr. Christy: No, you cannot make any statement here in the Grand Jury.

The Witness: No statement?

Mr. Christy: No statement. You will be required to answer the question. Do you wish the question repeated?

The Witness: May I, please?

Mr. Wachtell: Would the reporter read back the question which is open.

(Whereupon the reporter read the question.)

The Witness: May I be refreshed as to what my answer was on Thursday?

Mr. Wachtell: Yes. On Thursday you first refused to answer that question on the grounds that you felt it might tend to incriminate you. Subsequently, you said that you had not been in custody of those books and records on Monday, a week ago yesterday.

The Witness: I had refused to answer the question on Thursday and I refuse to answer it now.

The Foreman: You are directed to answer the question.

The Witness: I maintain my privilege.

By Mr. Wachtell:

Q. Mr. Curcio, have you ever had possession of the books and records of this local?

The Witness: I refuse to answer that question.

The Foreman: You are directed to answer it, Mr. Curcio.

[fol. 109] The Witness: I maintain my privilege.

Q. Did you have custody and control of these records last Thursday?

The Witness: I refuse to answer that question.

The Foreman: You are directed to answer, Mr. Curcio.

The Witness: I maintain my privilge.

Q. Do you have possession of those records or any of them today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Do you have custody and control of any of those records today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where are any of those records today, if you know?

The Witness: I refuse to answer.

The Foreman: You are directed to answer, Mr. Curcio.

The Witness: I maintain my privilege.

[fol. 110] Q. Who has any of those records today, if you know?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any of these records or all of these records a week ago Thursday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any or all of these records a week ago Saturday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any or all of these records a week ago yesterday, Monday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where were any or all of these records this past Thursday?

[fol. 111] The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Where are any or all of these records today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who, if you know, had any or all of these records a week ago Saturday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who had any or all of these records a week ago yesterday?

The Witness: I refuse to answer.

The Foreman: You are directed to answer the question, Mr. Curcio.

The Witness: I maintain my privilege.

Q. Who has any or all of these records today?

The Witness: I refuse to answer.

The Foreman: You are directed to answer that question, Mr. Curcio.

[fol. 112] The Witness: I maintain my privilege.

Mr. Wachtell: Mr. Foreman, would you excuse the witness and direct him to remain in the waiting room.

(The Foreman so directed the witness and the witness left the room.)

(The Grand Jury adjourned to Courtroom 318.)

JOSEPH CURCIO, recalled to the stand, continued:

By Mr. Wachtell:

Mr. Wachtell: Would you be good enough to read the first of the questions which the witness has been directed to answer by Judge Noonan?

(The reporter read the question as follows: "Q. I am going to ask you some questions, including some that were put to you on Thursday which you declined to answer.

Referring to the books and records of Local 269 of the International Brotherhood of Teamsters, have you at any time been in custody of those books and records?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: Mr. Reporter, would you please read the next question?

(The reporter read the question as follows: "Q. Mr. Curcio, have you ever had possession of the books and records of this local?")

[fol. 113] The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please, Mr. Reporter.

(The reporter read the question as follows: "Q. Did you have custody and control of these records last Thursday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please, Mr. Reporter.

(The reporter read the question as follows: "Q. Do you have possession of those records or any of them today?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Do you have custody and control of any of those records today?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Where are any of those records today, if you know?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Who has any of those records today, if you know?")

[fol. 114] The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the next question as follows: "Q. Where were any of these records or all of these records a week ago Thursday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Where were any or all of these records a week ago Saturday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Where were any or all of these records a week ago yesterday, Monday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Where were any or all of these records this past Thursday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Where are any or all these records today?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

[fol. 115] (The reporter read the question as follows: "Q. Who, if you know, had any or all of these records a week ago Saturday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Who had any or all of these records a week ago yesterday?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

Mr. Wachtell: The next question, please.

(The reporter read the question as follows: "Q. Who has any or all of these records today?")

The Witness: I refuse to answer, on the grounds that it may tend to incriminate me.

By Mr. Wachtell:

Q. Mr. Curcio, in the interim period between the time of your leaving the courtroom where you were directed to answer these questions by the Judge, between your coming back into this Grand Jury Room, did you consult with your counsel?

A. Yes, sir.

Mr. Wachtell: Mr. Foreman, I suggest that the witness be excused temporarily and directed to remain in the anteroom.

The Foreman: You are excused temporarily and directed to wait outside, Mr. Curcio.

(Whereupon the witness was temporarily excused.)

[fol. 116] JOSEPH CURCIO, recalled to the stand.

The Foreman: Mr. Curcio, you are directed to be here at 2:00 o'clock, Thursday, this week, same place.

The Witness: Yes, sir.

(Whereupon the witness was excused.)

(The Grand Jury adjourned at 4:30 p.m. until Thursday, April 19, 1956, at 2:15 p.m.)

[fol. 117] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOSEPH CURCIO, Defendant

C150-62

ORDER MAKING GRAND JURY MINUTES PART OF RECORD—May 9, 1956

Joseph Curcio, having been subpoenaed to appear before the Grand Jury for the Southern District of New York, and having so appeared and testified on April 10, April 12, and April 17, 1956, and having refused to answer certain questions, and having been adjudged in contempt of court and committed to the custody of the United States Marshal for a period of six months pursuant to order of this Court signed by the Honorable Gregory F. Noonan dated April 19, 1956, and said Joseph Curcio having served and filed his notice of appeal dated April 20, 1956, and

Arnold Cohen, Esq., attorney for appellant Joseph Curico, and Paul W. Williams, United States Attorney for the Southern District of New York, for the United States of America, being agreed, subject to the order of this Court, that a copy of the minutes of the Grand Jury testi-[fol. 118] mony of the witness Joseph Curcio on April 10, 12 and 17, 1956, should be released and filed in this action, to be deemed part of the record on appeal, and

Sufficient cause, therefore, appearing why these minutes should be so released and filed,

Now, therefore, on motion of the United States Attorney, it is

Ordered, that a copy of the minutes of the testimony of Joseph Curcio before the Grand Jury on April 10, 12 and

17, 1956 be released and filed in this action and be deemed part of the record on appeal.

Dated: New York, N. Y., May 9th, 1956.

(S.) Gregory F. Noonan, U. S. D. J.

Consented to:

(S.) Paul W. Williams, United States Attorney.

Consented to:

(S.) Arnold Cohen by Herbert A. Simon.

Filed 5-10-56.

[fol. 119] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1955

No. 385

Argued May 14 and 15, 1956 Decided June 5, 1956

Docket No. 24105

UNITED STATES OF AMERICA, Appellee,

v.

JOSEPH CURCIO, Defendant-Appellant

Before: MEDINA, LUMBARD and WATERMAN, Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York, Gregory F. Noonan, Judge.

Defendant appeals from an order adjudging him in contempt for refusal to answer certain questions propounded to him by the District Judge before a Grand Jury. Affirmed.

Paul W. Williams, United States Attorney for the Southern District of New York, New York City (Arthur H. Christy, Herbert M. Wachtell, Fioravante G. Perrotta [fol. 120] and Charles H. Miller, Assistant United States Attorneys, New York City, of Counsel), for appellee.

Arnold Cohen, New York City (Samuel Mozansky and Arnold Cohen, New York City, of Counsel), for appellant.

OPINION—June 5, 1956

MEDINA, Circuit Judge:

On March 29, 1956, a Special Grand Jury was impanelled in the Southern District of New York to investigate charges of racketeering in the garment and trucking industries. Appellant, Secretary-Treasurer of Local 269 of the International Brotherhood of Teamsters, having been duly served with a personal subpoena, and a subpoena *duces tecum* calling for the production of certain books and records of the union, failed to produce the books and records and refused to answer questions as to their whereabouts, claiming an alleged privilege under the Fifth Amendment and asserting that answers to the questions might tend to incriminate him. For such refusal he was adjudged guilty of a criminal contempt, pursuant to Rule 42(a) of the Federal Rules of Criminal Procedure, and sentenced to imprisonment for six months, unless he sooner purged himself by answering the questions. From the order containing such adjudication and commitment defendant appeals.

On his first appearance before the Grand Jury on Tuesday, April 10, 1956, in response to the subpoenas appellant refused to answer any questions whatever, stating that he had not consulted a lawyer and that he would not testify until he had done so. The matter was put over to Thursday, April 12, 1956, when appellant arrived with his counsel, who remained in the anteroom of the Grand Jury during the time of appellant's interrogation. The full rec- [fol. 121] ord of what occurred has been released and is on file but is not a part of the record before us. It does appear, however, that appellant was determined to give no information whatever concerning the whereabouts of the books and records, although he readily admitted that there were such books and records and that he was Secretary-Treasurer of Local 269. He did testify that these books and records were not in his possession either at the time of the service of the subpoena *duces tecum* (Monday, April 9), or at the time of his appearance before the Grand Jury (Thursday, April 12).

Accordingly, on April 17, the Assistant United States Attorney in charge of the interrogation of Curcio brought the matter of his recalcitrance before the District Judge

for a determination of whether or not the Fifth Amendment plea should be sustained or overruled. The court reporter who had been present before the Grand Jury identified his stenotype tape of some fifteen questions addressed to appellant relative to the whereabouts of the books and records and his refusals to answer any of them. Appellant's counsel was present. His first move was to request that "the witness be furnished with a copy once the minutes are transcribed of the questions which are the subject in issue at the present time." The reporter then testified at length to the record of what occurred before the Grand Jury, giving the text of the fifteen questions and whatever was said in reference thereto by appellant, by the foreman of the Grand Jury and by the Assistant United States Attorney conducting the examination of appellant.

The questions were:

Q. I am going to ask you some questions, including some that were put to you on Thursday which you declined to answer. Referring to the books and records of Local 269 of the International Brotherhood of [fol. 122] Teamsters, have you at any time been in custody of those books and records?

Q. Mr. Curcio, have you ever had possession of the books and records of this local?

Q. Did you have custody and control of these records last Thursday?

Q. Do you have possession of those records or any of them today?

Q. Do you have custody and control of any of those records today?

Q. Where are any of those records today, if you know?

Q. Who has any of those records today, if you know?

Q. Where were any of these records or all of these records a week ago Thursday?

Q. Where were any or all of these records a week ago Saturday?

Q. Where were any or all of these records a week ago yesterday, Monday?

Q. Where were any or all of these records this past Thursday?

Q. Where are any or all of these records today?

Q. Who, if you know, had any or all of these records a week ago Saturday?

Q. Who had any or all of these records a week ago yesterday?

Q. Who had any or all of these records today?

There was extended argument, principally by appellant's counsel, on the subject of whether or not there was any plausible basis for appellant's claim that answers to the questions might tend to incriminate him. The principal contention was:

> I am telling the Court in good conscience that he is asserting the Fifth Amendment because in his mind [fol. 123] there is some doubt as to whether or not any of these answers might incriminate him by conspiracy, by association, or by any other subsequent action that the United States Attorney's office might start.

Reference was also made in a vague way to a civil litigation "going on on the 15th floor," which was a trial of a controversy between Martin T. Lacey and John J. O'Rourke over an election to the presidency of the Teamsters Joint Council. Lacey had charged that O'Rourke and his adherents, or some of them, were mixed up with gangsters and racketeers. Some photostats of newspaper clippings relating to the Lacey-O'Rourke controversy and also to a so-called drive against "city rackets" by the federal and local prosecutors, are contained in appellant's Appendix. But, so far as we can make out, there is nothing in the record before us to indicate that appellant is connected with or suspected of being connected with any crime.

At the close of an extended argument the court directed appellant to answer each of the fifteen questions and the Assistant United States Attorney stated "for the record" that there were other questions, not relating to the books and records, which appellant had refused to answer and, with the approval of the court, these were reserved for "some future date," should the government desire rulings thereon. No objection to this procedure was made by ap-

pellant's counsel who merely requested an opportunity to consult with his client before appellant returned to the Grand Jury room; and this request was granted.

On April 19, 1956, appellant returned to the Grand Jury and persisted in his refusal to answer any of the questions pertaining to the whereabouts of the books and records. Appellant was brought before the court and, after some further argument to which reference will be made shortly, the Court in the presence of the Grand Jury directed ap- [fol. 124] pellant again to answer the questions. Upon his refusal to do so he was adjudged in contempt.

Appellant claims that he was not afforded a hearing as required by law, that he was not furnished with a full copy of the minutes of the Grand Jury proceedings during his interrogation on April 10 and April 12, and that he was justified in refusing to answer the questions.

We find no defect in the procedure followed here, which follows the pattern long in vogue in this Circuit. See *United States* v. *Trock*, 2 Cir., —— F. 2d ——, decided April 9, 1956. Appellant did have a full and fair hearing on April 17. The subject matter of this hearing was the exercise of his alleged constitutional right under the Fifth Amendment. Both appellant and his counsel were afforded every opportunity to produce any evidence, by appellant or by others, which might tend to show that there was a plausible basis for the claim of privilege. But nothing was said about any witnesses nor can we find any basis whatever for appellant's alleged fear that he may be "trapped," as he expressed it.

The requests for "a list of specifications," for a transcript of the testimony of appellant before the Grand Jury on April 12, and for "a reasonable time to prepare the defense" and "have it supported by witnesses or any other documents that I may feel are relevant or material to the defense of contempt in a contempt proceeding," were all made on April 19, after appellant had again refused to answer the questions. These demands were evidently based upon a misconception of the function of the proceedings which had already taken place on April 17, or they constituted a last ditch effort to delay the proceedings. There is no indication as to who the witnesses were or what would

be the subject of their testimony. Perhaps counsel did not anticipate that the court would without further ado, [fol. 125] and in the presence of the Grand Jury, himself put the questions to the witness and direct him to answer. But that is what took place; and the refusals to answer thus clearly constituted a criminal contempt "in the actual presence of the court," to be punished summarily, as provided in Rule 42(a) of the Federal Rules of Criminal Procedure. No hearing on this phase of the matter was required or necessary; nor could a hearing have served any useful purpose.

Nothing to the contrary was held by the First Circuit in *Carlson* v. *United States*, 209 F. 2d 209 or in *Hooley* v. *United States*, 209 F. 2d 219. Had the Grand Jury merely cited or presented appellant to the court, for his refusals before the Grand Jury to answer questions in accordance with the prior directions of the Court, an entirely different situation would have been presented. Had that been the case here the contempt would not have been committed "in the actual presence of the court."

Nor do appellant's contentions find support in *United States* v. *Zwillman*, 2 Cir., 108 F. 2d 802. That was also a case where the alleged contempt had been committed in the presence of the Grand Jury, not in the presence of the court. At the hearing which covered the entire matter, including such argument or evidence as had relevancy to defendant's claim of privilege under the Fifth Amendment, counsel asserted that a scrutiny of the Grand Jury minutes of defendant's interrogation would reveal the fact that he had been engaged in the liquor business before the repeal of the Eighteenth Amendment, and he also proffered witnesses on the subject. As the questions which Zwillman refused to answer sought to elicit the names of his business associates in the years 1928 to 1932, it was held that there had been a curtailment of his right to "show that he was likely to be endangered by answering," and the [fol. 126] contempt adjudication was reversed. Here the very contrary appears. There was a hearing at which appellant was given the fullest opportunity to "show that he was likely to be endangered by answering," and he failed to do so. At the hearing on April 17 there was no intima-

tion that anything said by appellant in his so-called testimony before the Grand Jury on April 12 had any bearing on his refusals to answer the questions concerning the whereabouts of the books and records, nor was any such suggestion made at any time. Appellant was in constant consultation with his counsel during the entire period of his appearance before the Grand Jury on April 12, and it is reasonable to suppose that counsel would have directed the attention of the court to any part of such interrogation which might be claimed to support the alleged privilege, as was done in the *Zwillman* case. Mere vague and belated demands such as we have in this record are plainly insufficient.

It should be unnecessary to add that counsel's suggestion, just before the court propounded the questions to appellant for the last time, that he inform the court confidentially, and in the absence of the Grand Jury, of "exactly what is in my mind, and most likely in my client's mind," added nothing of significance to the record.

On the merits we think the case too clear for reasonable debate. In *United States* v. *White*, 322 U.S. 694, the Supreme Court refused to recognize a claim of privilege asserted by a labor union official with respect to certain records of the union in his possession because, as the Court stated at page 699:

> (T)he official records and documents of the organization that are held by them in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even [fol. 127] though production of the papers might tend to incriminate them personally.

This requirement to produce would be no more than an empty and meaningless form of words if the lawful custodian of the records could hand over possession to another and then refuse to say when or where he had last seen them on the ground that any testimony on the subject would tend to incriminate him. To sustain the privilege here asserted would provide an easy method by which any investigation could be hamstrung from the start.

Although there is nothing before us to show that ap-

pellant has had any dealings with racketeers or extortionists, we may assume that Local 269 is in some way involved in the controversy between Lacey and O'Rourke and that he has or has had some contact with O'Rourke, who, we are told, has been charged with seeking the presidency of the Teamsters Joint Council through the acts of gangsters and racketeers. We are nevertheless at a loss to see how appellant's answers to any of the fifteen questions here propounded can have any tendency to incriminate him. It is said that he has a criminal record. But what of that? We are not informed of the nature of the charge upon which he was convicted nor of the date thereof; nor have we any reason to suppose that there is any connection between the whereabouts of the books and records of Local 269 and the crime or crimes which appellant is said to have committed.

It seems to be supposed by counsel that notorious criminals, racketeers and unsavory characters generally have an open sesame to the privilege guaranteed by the Fifth Amendment. But we can draw no such inference from the rulings made in *Hoffman* v. *United States*, 341 U. S. 479 and *United States* v. *Doto*, 2 Cir., 205 F. 2d 416, strongly [fol. 128] relied upon by appellant. It is not the general reputation or criminal record of the witness which controls but rather the circumstances of each particular case. The constitutional rights of the so-called "little fellow" are entitled to no less protection than are the rights of those who pursue a career of crime in the grand manner. The test is whether or not on the record before the court defendant has made a showing "that he was likely to be endangered by answering the questions." *United States* v. *Zwillman, supra*. We can find no such showing here.

United States v. *Trock*, —— F. 2d ——, decided by this Court on April 9, 1956, is especially urged upon us as in some way supporting appellant's contentions. But there is no similarity whatever between the two cases. In that case there was an insufficient showing of peril to the witness: here there is no showing whatever. Mere atmosphere will not suffice.

Affirmed.

[fol. 129] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 5th day of June one thousand nine hundred and fifty-six.

Present: Hon. Harold R. Medina, Hon. J. Edward Lumbard, Hon. Sterry R. Waterman, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

JOSEPH CURCIO, Defendant-Appellant

JUDGMENT—June 5, 1956

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fols. 130-133] [File endorsement omitted]

[fols. 134-135] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

ORDER DENYING REHEARING AND GRANTING STAY OF MANDATE—June 22, 1956

A petition for rehearing and to stay the issuance of the mandate for thirty (30) days pending the filing of a petition for a writ of certiorari to the Supreme Court of the

United States having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that said petition for rehearing be and it hereby is denied.

Further ordered that the issuance of the mandate be and it hereby is stayed.

A. Daniel Fusaro, Clerk.

[fol .136] (Clerk's Certificate to foregoing transcript omitted in printing.)

[fol. 137] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1956

No. 260

JOSEPH CURCIO, Petitioner

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.